STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

June 7, 2012

10:00 a.m.

90 Church Street
4th Floor, Room 4A & 4B
New York City

I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

II. APPROVAL OF MINUTES

April 5, 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 Information Technology Transformation

Steven R. Smith, Director of Operations, Office of Health Information Technology Transformation

D. 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

Dr. Anderson Torres, Vice Chair of the Public Health Committee

V. HEALTH POLICY

Report on the Activities of the Committee on Health Planning

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

VI. REGULATION

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

Angel Gutiérrrez, M.D., Chair

For Emergency Adoption

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

For Discussion

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

10-15 Amendment of Section 400.18 of Title 10 NYCRR
(Statewide Planning and Research Cooperative System (SPARCS))

VII. 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

Acute Care Services – Construction **Exhibit #3**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112323 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111444 C	Lincoln Medical and Mental Health Center (Bronx County) Dr. Boufford – Abstaining Dr. Martin - Interest Dr. Sullivan – Recusing	Contingent Approval
2.	121088 C	Millard Fillmore Suburban Hospital (Erie County) Mr. Booth - Interest	Contingent Approval

Long Term Home Health Care Program – Construction **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121093 C	St. Cabrini Nursing Home (Westchester County) Mr. Fassler - Interest	Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct **Exhibit #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121169 E	NYHB, Inc. (Kings County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112179 B	Amsterdam REC, LLC d/b/a Amsterdam Regional Eye Center (Montgomery County)	Contingent Approval
2.	112379 B	The Surgery Center at Orthopedic Associates, LLC (Dutchess County)	Contingent Approval

Diagnostic and Treatment Center – Establish/Construct **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	101101 B	Street Corner Clinic, Inc. (Kings County)	Contingent Approval

Restated Certificate of Incorporation **Exhibit #9**

	Applicant	E.P.R.C. Recommendation
1.	The Elizabeth Church Manor Nursing Home Corporation	Approval
2.	The James G. Johnston Memorial Nursing Home Corporation	Approval

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

	Applicant	E.P.R.C. Recommendation
1.	NYU Downtown Hospital Chinese Community Partnership for Health Foundation, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #11**

Number	Applicant/Facility	E.P.R.C. Recommendation
1633-L	320 MacDougal Street, Inc. (Bronx, Richamond, Kings, Queens, Nassau and New York Counties)	Contingent Approval
1712-L	Aide and Comfort, Inc. (Nassau, Suffolk, Westchester, Rockland, Queens, New York, Bronx, Kings, and Richmond Counties)	Contingent Approval
1688-L	Alissa Home Care, Inc. (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)	Contingent Approval

1944-L	Always Best Care of NY, LLC (Nassau and Suffolk Counties)	Contingent Approval
1667-L	B & M School of Health Careers, Inc. (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)	Contingent Approval
1623-L	Best Help Home Care Corp. (Kings and Bronx Counties)	Contingent Approval
1844-L	CareGivers by Design, Inc. (Westchester and Rockland Counties)	Contingent Approval
1765-L	Care Providers, Inc. d/b/a Home Helpers #58319 (Queens, Bronx, Kings, Richmond, New York, and Nassau Counties)	Contingent Approval
1919-L	Caring Moments Homecare, Inc. (New York, Nassau, Kings, Bronx, Queens, and Richmond Counties)	Contingent Approval
1587-L	CHDFS, Inc. (Bronx, Rockland, Kings, New York, and Queens Counties)	Contingent Approval
1689-L	Everyday Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
1971-L	Ideal Home Care Services, Inc. (Suffolk, Nassau, New York, Bronx, Queens, Richmond and Kings Counties)	Contingent Approval
1969-L	J & A Hurley, Inc. d/b/a Home Instead Senior Care (Schenectady, Schoharie, Albany	Contingent Approval

	and Montgomery Counties)	
1706-L	K & D Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
1923-L	Marks Homecare Agency of NY, Inc. (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)	Contingent Approval
1889-L	PCDI Healthcare and Consultants of Texas, LLC (New York, Kings, Bronx, Queens, Richmond and Nassau Counties)	Contingent Approval
1965-L	Regina G. Yankey d/b/a Orange Homecare and Staffing Agency (Orange, Sullivan, Rockland, Dutchess, Westchester, Bronx, and Putnam Counties)	Contingent Approval
1800-L	Safe Haven Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)	Contingent Approval
1937-L	Queens Homecare Agency, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties)	Contingent Approval
1939-L	Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI (Nassau, Suffolk, and Queens Counties)	Contingent Approval
1789-L	Senior Comfort Solutions, LLC d/b/a Comfort Keepers (Nassau and Suffolk Counties)	Contingent Approval
1973-L	T.A. Daniels Holdings, Inc. d/b/a Senior Helpers (Westchester County)	Contingent Approval

1975-L	Tayler Ashley Group, Inc. d/b/a Senior Helpers (Dutchess, Westchester, Orange, Putnam, Sullivan, and Ulster Counties)	Contingent Approval
1961-L	TriMed Home Care Services, Inc. (Nassau and Suffolk Counties)	Contingent Approval
1922-L	Your Choice Homecare Agency, Inc. (New York, Westchester, Kings, Queens, Bronx and Richmond Counties)	Contingent Approval
2113-L	Steuben County Public Health & Nursing Services (Steuben County)	Contingent Approval
1976-L	Parent Care, LLC (Kings, Richmond, Queens, New York, Bronx, and Nassau Counties)	Contingent Approval
2099-L	SeniorBridge Family Companies (NY), Inc. (See exhibit for counties listed)	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

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #12**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112042 B	The Chautauqua Center (Chautauqua County) Mr. Booth - Interest	Contingent Approval

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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121049 E	Lewis County Hospice (Lewis County) Mr. Booth - Interest	Approval

Residential Health Care Facility – Establish **Exhibit #14**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112156 E	Parkview Operating Co., d/b/a Westchester Center for Rehabilitation & Nursing (Westchester County) Mr. Fensterman - Recusal	Contingent Approval

Certified Home Health Agencies – Establish **Exhibit #15**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121018 E	Lewis County General Hospital d/b/a Lewis County General Hospital Certified Home Healthcare Agency (Lewis County) Mr. Booth - Interest	Approval
2.	121219 E	L. Woerner, Inc. d/b/a HCR (Clinton County) Mr. Booth – Interest Ms. Hines - Interest	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #16**

Number	Applicant/Facility	E.P.R.C. Recommendation
1986-L	Good Samaritan CareGivers, Inc., d/b/a Good Samaritan Home Health Agency (Allegany, Erie, Niagara, Cattaraugus, Genesee, Orleans, Chautauqua, Monroe, and Wyoming Counties) Mr. Booth – Interest Ms. Hines – Interest	Contingent Approval
1856-L	Life's Changing Seasons Eldercare, LLC (Onondaga, Oswego, Seneca, Cayuga, Cortland, Oneida, Madison and Tompkins Counties) Mr. Booth – Interest	Contingent Approval
1798-L	NurseCore Management Services – New York, LLC (Livingston, Monroe, Ontario and Wayne Counties) Mr. Booth – Interest Ms. Hines – Interest	Contingent Approval
1977-L	Sephardic Home Care Services, Inc. (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties) Mr. Fassler – Interest	Contingent Approval
2033-L	Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care (Niagara County) Mr. Booth – Interest	Contingent Approval
2112L	CL Healthcare, Inc. (Bronx 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 or HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

Dialysis Services – Establish/Construct **Exhibit # 17**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	092158 B	DV Corp. d/b/a Riverside Dialysis (Westchester County)	Disapproval

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facility– Establish/Construct **Exhibit # 18**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	082143 E	OMOP, LLC d/b/a Orchard Manor, Inc. (Orleans County)	Deferred

XIII. NEXT MEETING

July 26, 2012, Latham
August 9, 2012, Latham

IX. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
April 5, 2012

The meeting of the Public Health and Health Planning Council was held on Thursday, April 5, 2012, at the Empires State Plaza, Meeting Room #6, Albany, New York. Chairman, Dr. William Streck, presided.

COUNCIL MEMBERS PRESENT:

Dr. William Streck, Chair
Dr. Howard Berliner
Dr. Jodumatt Bhat
Mr. Christopher Booth
Mr. Michael Fassler
Mr. Howard Fensterman
Dr. Carla Boutin-Foster
Dr. Ellen Grant
Ms. Victoria Hines
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. Patsy Yang
Commissioner Shah (ex-officio)

DEPARTMENT OF HEALTH STAFF PRESENT:

Dr. Guthrie Birkhead
Ms. Rachel Block
Anna Colello
Ms. Barbara DelCogliano
Mr. Christopher Delker
Mr. James Dering
Ms. Ellen Flink
Ms. Colleen Frost
Ms. Sandy Haff
Mr. Jason Helgerson
Ms. Mary Ellen Hennessy
Ms. Gloria Jimpson
Ms. Karen Lipson
Ms. Karen Madden
Ms. Pat McGraw
Dr. John Milliren
Ms. Sylvia Pirani
Ms. Linda Rush
Ms. Lisa Thomson

INTRODUCTION:

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

MEETING OVERVIEW:

Dr. Streck gave a brief overview of the Council meeting agenda.

APPROVAL OF THE MINUTES OF FEBRUARY 2, 2012:

Dr. Streck asked for a motion to approve the February 2, 2012 Minutes of the Public Health and Health Planning Council meeting. Mr. Booth motioned for approval which was seconded by Mr. Fensterman. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Dr. Streck introduced Commissioner Shah to give the Department of Health Activities Report. Dr. Shah updated the Council members on the topics of the 2012-13 Budget, Synthetic Marijuana and National Public Health Week.

Many members had questions and comments relating to Dr. Shah's report. In particular, Mr. Fensterman stated that he is concerned with the health of the veterans who are returning from Iraq and Afghanistan and particular those veterans returning home with a traumatic brain injury. Mr. Fensterman is concerned that the Department's TBI Council which only meets three times a year, with close to a $13,000,000 budget, which may not be adequate. Mr. Fensterman asked that the Department follow this important concern and coordinate with the Federal government relative to protecting the public health of those veterans. Commissioner Shah stated that there is no better definition of public service compared to what the vets have done for us and continue to do for us. Working closer with the V.A. system, which has actually very good centers of excellence where these issues are addressed, is something the Department can do better.

To review Dr. Shah's full report and questions and comments please refer to pages 10 through 25 of the attached transcript.

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

REPORT OF THE OFFICE OF HEALTH SYSTEMS MANAGEMENT ACTIVITIES

Dr. Streck turned the meeting over to Mr. Cook to give the report of the Office of Health Systems Management containing an update on Peninsula Hospital and Sheehan Hospital. To review Mr. Cook's report and the members questions and comments relating to the hospital closures and other concerns relating to health facilities.

To review the full report Office of Health Systems Management and the questions and comments please refer to pages 25through 39 of the attached transcript.

REPORT OF THE OFFICE OF HEALTH INFORMATION TECHNOLOGY TRANSFORMATION ACTIVITIES

Dr. Streck announced that due to time constraints and Ms. Block having to attend to a prior commitment that Ms. Block's power point presentation will be posted on the Department's website.

REPORT OF THE OFFICE OF HEALTH INSURANCE PROGRAMS

Dr. Streck introduced Mr. Helgerson to give the Report of the Office of Health Insurance Programs. Mr. Helgerson addressed the important topic of Medical global spending cap, gave a brief update on the Medicaid Redesign Team Phase Two efforts. Please refer to pages 39 through 56 of the transcripts for Mr. Helgerson's report and comments from the members.

PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

Next, Dr. Streck asked Ms. Rautenberg to report on the Activities of the Committee on Public Health. Ms. Rautenberg updated the members on the activities of the Committee on Public Health. She advised that the Committee on Public Health has been meeting with the Committee on Health Planning in a series of discussions regarding changing the Certificate of Need program, The Ad Hoc Committee has been meeting to update and revise the State Health Improvement Plan. Ms. Rautenberg thanked Dr. Birkhead and Ms. Pirani for their continuous support. To read Ms. Rautenberg's complete report, please refer to pages 56 through 58 of the transcript.

HEALTH POLICY

Report on the Activities of the Committee on Health Planning

Under the Category Health Policy, Dr. Streck introduced Dr. Rugge to update the Council on the work of the Committee on Health Planning. Dr. Rugge reported that the Health Planning Committee convened a special committee meeting on March 21, 2012 to discuss a statement of the mission and vision for CON. Dr. Rugge announced there will be proposals for streamlining CON for consideration by the Council in June.

Dr. Rugge advised that on March 22, 2012, there was a joint meeting with the Public Health Committee and special guests Commissioners Shah, Gonzalez-Sanchez, Hogan, and Burke discuss points on the integration of medical care and behavioral health services. Please see pages 58 through 62 of the attached transcript.

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

Dr. Streck asked Mr. Warner to advise the members on a new bill relative to vital records. Mr. Warner explained to the Council Chapter 552 of the New York State Laws of 2011, which became law on September 23rd of 2011 and took effect on March 21, 2012. The new law requires the Department of Health and the New York City Department of Health to implement a certificate of stillbirth. Many families who had suffered a stillbirth wanted a certificate acknowledging the labor and delivery process that had ended in a stillbirth. A certificate of stillbirth may be requested and issued regardless of the date of when the fetal death certificate was issued. To date, applications for the certificate have been received regarding stillbirths that go back to the late 1930s. A certificate of stillbirth can only be issued if a fetal death certificate is on file, and the certificate is based on information supplied on the fetal death certificate. Mr. Warner then mentioned the fact that in the eleven business days since the law went to effect, there were over sixty requests for certificates of stillbirth and all are currently being reviewed and processed. Mr. Warner concluded his remarks by stating that he had numerous conversations with the advocates for this legislation during the process of creating the certificate of stillbirth, and they've asked me to express their willingness to be present at any future Council meeting if you should have any questions or like an update on the progress.

Dr. Streck thanked Mr. Warner and asked Council members if they had questions. To review Mr. Warner's report and comments, please refer to pages 63 through 67 of the attached transcript.

REGULATION

Dr. Streck after a short break welcomed members and the public and introduced Dr. Palmer to give his Report of the Committee on Codes, Regulations and Legislation.

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)

Dr. Palmer briefly described regulation 9-17 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) and motioned for adoption. The motion to adopt was seconded by Dr. Berliner. The motion carried. Please see pages 67 through 69 to review the details of the regulation.

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

Dr. Palmer then described 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, and Section 405.13, 405.22, 405.30 and 405.31 of Title 10 NYCRR – Organ Transplant Provisions and advised the regulations are before the Council for discussion purposes. Dr. Palmer concluded his report and Dr. Streck inquired if there were questions from Council members. To review the discussion, please refer to pages 69 through 74.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Dr. Streck introduced Mr. Kraut to give the Report of the Committee on Establishment and Project Review

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	Council Action
1.	121076 C	Institute for Urban Family Health/Sidney Hillman Center (New York County) Mr. Fassler – Interest Dr. Rugge - Abstaining	Contingent Approval

Mr. Kraut introduced CON application 121076 and noted for the record that Mr. Fassler has an interest and Dr. Rugge will be abstaining due to an interest. The motion to approve was seconded by Dr. Berliner. See pages 74 and 75 of the transcript.

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

	Number	Applicant/Facility	Council Action
1.	121079 C	Boro Park Operating Co., LLC d/b/a Boro Park Center for Rehabilitation and Healthcare (Kings County) Mr. Fassler – Recusal Mr. Fensterman – Recusal	Contingent Approval

Mr. Kraut moved to application 121079 and noted for the record that Mr. Fassler and Mr. Fensterman are recusing and exiting the meeting room. Mr. Kraut briefly described the nature of the project and motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with the noted recusals. Mr. Fassler and Mr. Fensterman re-entered the meeting room. Please see page 75 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

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

	Number	Applicant/Facility	Council Action
1.	102376 C	Albany County Nursing Home (Albany County)	Deferral

Mr. Kraut introduced CON application 102376 and noted for the record that this application was considered at an April 5, 2012 Special Establishment and Project Review Committee meeting. The Committee failed to accept that recommendation, and an alternate recommendation was made to defer the project, which was unanimously passed by the Committee. Mr. Kraut motioned for deferral which was seconded by Dr. Berliner. The motion to defer carried. Please see pages 75 and 76 of the attached transcript.

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct **Exhibit #6**

	Number	Applicant/Facility	Council Action
1.	112222 B	Brooklyn SC, LLC (Kings County)	Contingent Approval

Mr. Kraut moved to application 112222, briefly described the application and moved for approval which was seconded by Dr. Berliner. The motion to approve carries. Please see pages 76 and 77 of the attached transcript.

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	Council Action
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	Council Action
1.	112136 E	Hopkins Ventures, LLC d/b/a Hopkins Center for Rehabilitation and Healthcare (Kings County)	Contingent Approval

Certificate of Incorporation **Exhibit #9**

	Applicant	Council Action
1.	Oswego Health Foundation	Approval

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

	Applicant	Council Action
1.	United Cerebral Palsy and Handicapped Children's Association of Chemung County, Inc.	Approval

Certificate of Dissolution **Exhibit #11**

	Applicant	Council Action
1.	Lutheran Center for the Aging, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #12**

Number	Applicant/Facility	Council Action
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

Mr. Kraut moved the remained projects in Category 1 with the exception of project number 112275 and 112348 which was moved to Category 2. Mr. Kraut briefly described each project and motioned for approval which was seconded by Dr. Berliner. To review the descriptions of the aforementioned applications, please refer to pages 77 through 79 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 #13**

	Number	Applicant/Facility	Council Action
1.	121051 E	Corning Hospital (Steuben County) Mr. Booth - Interest	Contingent Approval

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

	Number	Applicant/Facility	Council Action
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	Council Action
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

Mr. Kraut moved to Category 2 and introduced above applications and noted interests from Mr. Booth on applications 121051, 112184, and 112343, and also noted Ms. Regan's interest on application 102454 and Mr. Fassler and Ms. Regan's interest on 112211. He made a motion to approve all the applications, Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 80 through 81 of the attached transcript.

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

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

Mr. Kraut then moved to application and noted a recusal from Mr. Booth and Hines and they exited the room. He made a motion to approve the application with Mr. Berliner seconded the motion. The motion to approve carried and Mr. Booth and Ms. Hines re-entered the room. Please see pages 81 through 82 of the attached transcript.

2.	112275 E	Rockville Operating, LLC d/b/a Advanced Center for Rehabilitation and Nursing at Rockville (Nassau County) Mr. Fensterman – Recusal	Contingent Approval
3.	112348 E	St. James Operating, LLC d/b/a St. James Rehabilitation and Healthcare Center (Suffolk County) Mr. Fensterman – Recusal	Contingent Approval

Mr. Kraut then moved to residential health care facilities applications from Category One and stated for the record that Mr. Fensterman is recusing on application 112275 and application 112348 and has exited the meeting room. Mr. Kraut described the applications and motioned for approval. The motion was seconded by Dr. Berliner. The motion to approve carried. Mr. Fensterman re-entered the meeting room. Please see pages 82 and 83 of the attached transcript.

	Number	**Applicant/Facility**	**Council Action**
1.	111456 E	4800 Bear Road Operating Company, LLC d/b/a Elderwood at Liverpool (Onondaga County) Mr. Booth - Interest	Contingent Approval

Mr. Kraut then moved to applications listed in Category Two under Residential Health Care Facilities and described application 111456, and noted an interest by Mr. Booth and a member's abstention. He made a motion to approve with Dr. Berliner seconded the motion. The motion to approve carried. Please see pages83 through 84 of the attached transcript.

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

Mr. Kraut then batched the following applications 111462, 11463, 111466, 111467, 111468, 111469, 111470, and 111471. He noted an interest by Mr. Booth on applications and made a motion to approve, with Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 84 through 85 of the attached transcript.

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

Mr. Kraut then moved to application 112218 and noted a recusal from Mr. Fassler, who exited the room and an interest by Mr. Booth. He made a motion to approve the application which Dr. Berliner seconded. The motion to approve carried and Mr. Fassler re-entered the room. Please see pages 85 and 86 of the attached transcript.

HOME HEALTH AGENCY LICENSURES **Exhibit #18**

Number	Applicant/Facility	Council Action
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

Mr. Kraut then batched the licensure applications. He noted an interest from Ms. Regan on applications 1691, 1882, 1716, 1634, 1906, 1962, and 1996, Mr. Booth's interest on applications 1901, 2107, 2108, 2096, 2010, 2028, 2029, 2030 and 2031 and Ms. Hines interest on application 1901. He made a motion to approve with Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 86 through 88 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

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

	Number	Applicant/Facility	Council Action
1.	112382 B	North Country Eye Center (Saratoga County) Dr. Rugge - Abstaining	Contingent Approval

Mr. Kraut then moved to application 112382 and noted an interest from Dr. Rugge and stated Dr. Rugge will be abstaining from the application due to a possible service agreement with the application. He made a motion to approve the application and noted one member in opposition. Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 88 and 89 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

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

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

Mr. Kraut declared a conflict on application 112086 and exited the meeting room. Mr. Booth then noted for the record the above application the department deferred at this applicant's request so that a change in the applicant entity may be made and no action was required. Please see pages 89 and 90 of the attached transcript.

ADJOURNMENT:

Dr. Streck adjourned the public portion of the meeting and moved into Executive Session for Dr. Strange to give the Report on the Committee on Health Personnel and Interprofessional Relations.

NEW YORK STATE DEPARTMENT OF HEALTH

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

DATE: April 5, 2012

LOCATION: Concourse Meeting Room 6
Albany, New York

CHAIRPERSON: Dr. William Streck

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DR. STRECK: I am Dr. William Streck, chair of the Public Health and Health Planning Council. I have the privilege of calling the meeting to order, and I welcome all participants and observers. I'd like to remind council member staff in the audience that the meeting is subject to the Open Meeting Law and is broadcast over the internet. It may be accessed at the Department of Health's website. The websites are available no later than seven days after the meeting.

There are some suggestions or ground rules we always go through here. We have synchronized captioning, so it's important that people do not talk over one another. The first time you speak, please identify yourself. Microphones are hot. They pick up sound, so keep your mics off unless you are making comments, please. There is a record of appearance form for our audience. That form is outside the meeting. It's also posted on the -- the Department's website.

I would like to then move to a resolution of appreciation on behalf of the Council, and Mr. Kraut and I have signed a resolution of appreciation for Dr. John Milliren, who will be retiring from the Department on April the 27th after having served thirty dedicated years. And John is here, and it's a great privilege to

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be able to read this resolution of appreciation. Whereas John Milliren has served the citizens of the State of New York over the past thirty years in the division of health facility planning, and Dr. Milliren has worked extensively to develop and draft the need methodologies for lithotripters, transplant services, traumatic brain injured rehabilitation services, magnetic resonance imagers, cardiac services, radiation oncology, and long-term ventilator beds, and whereas Dr. Milliren has been instrumental in the establishment of a process for the review of new medical technologies and health services and for the operation of and demonstration -- operation of demonstration projects to ensure that such equipment and services will be of high quality of adequate safety, medically efficacious and efficiently provided at a reasonable cost, and whereas members of the Public Health and Health Planning Council and staff of the Department of Health recognize that during his years with the Department, Dr. Milliren has contributed immeasurable knowledge and expertise in healthcare planning to the Department's efforts in developing bed and service-need methodologies for healthcare services, and whereas members of the Council recognize that Dr. Milliren has diligently and admirably

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John, thank you, and congratulations. With thirty years of service, you certainly have some parting advice for us, so what would that be?

DR. MILLIREN: Well, it's just kind of ironic. My first day of work was April 5th, 1982. I was telling Jeff we had fourteen inches of snow on April 5th, so -- so the weather has improved, and it seems a rediscovery of regional planning at the Department of Health and New York State that sunny skies are back again. So this is a good time for me to -- to take -- make my exit. So thank you.

DR. STRECK: Well, thank you, John. And I can say personally, and I know for all of us who've had the privilege of working with you over the years, it has been a great privilege, and we do very much appreciate

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your contributions. A resolution is one very modest way to express that -- that profound appreciation.

(Off-the-record discussion)

DR. STRECK: Mr. Berliner asked if the -- Dr. Berliner ask if the resolution was binding on future councils, for those who -- who could not hear. And in fact, this one is, so thank you.

I'll give you a brief overview of what we'll cover in today's meetings. We'll have the Department of Health reports. We will hear from the Commissioner. Ms. Block had to leave for another engagement, so the Office of Health Information Technology and Transformation report will be available on the website. There -- there are some slides presenting the information she was going to provide today.

Mr. Cook will give an update of the Office of Health Systems Management Activities. Mr. Helgerson will give an update on the Office of Health Insurance Programs. And Dr. Birkhead will give report on the activities of the Office of Public Health.

We will then move to the category of public health services. And under this category, Ms. Rautenberg will give an update on the initiatives of the Committee on Public Health.

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We will then move to the category of health policy. And under that category, Dr. Rugge will give report on the activities of the Health Planning Committee as well as the committee recommendation for a designated stroke center.

Mr. Warner will advise the Council on the results of the legislation signed by Governor Cuomo creating a certificate of stillbirth. We will defer due to time considerations any discussion on the correspondence policy, and then we will break for lunch after these reports.

After lunch, we will convene. And Dr. Palmer will present under the category of regulation the regulations for adoption and discussion.

We will then move to the project review recommendations and establishment actions. Mr. Kraut will report on the C.O.N. applications, including the one reviewed this morning. The Council will then go into executive session for a review of inter-professional health personnel issue.

I would point out that members of the Council and most of our guests are aware of the need to recognize conflicts of interest, and that if you do have conflicts, please make sure they are noted. We will go

4-5-2012 - Albany, New York - Planning Council through the process of batching the C.O.N. applications, as we have been doing. And I trust that everyone has reviewed the applications and assured that they are ready to proceed.

I'll pause for a moment. Any comments, that point? Hearing none, I'd ask -- go to our next agenda item and the adoption of the minutes. May I have a motion for adoption of the February 2nd, 2012, Public Health and Health Planning Committee minutes?

MR. BOOTH: So moved.

DR. STRECK: Moved and seconded. Mr. Fensterman, thank you. Any discussion? Those in favor, aye. Thank you.

We'll now on to the reports, and it's my pleasure to welcome Commissioner Shah, who will update the Council about the Department's activities since our last meeting. But before doing that, if you will allow me a slight digression to talk about some of Dr. Shah's research and the profound implications that it's having on our society even as it's just been published. You may have read that Dr. Shah in a younger time did some research on obesity that was recently published, and it showed that the B.M.I. under diagnoses obesity. And that in particular, that dual energy x-ray of

4-5-2012 - Albany, New York - Planning Council absorptiometry provides better measurements of obesity such that thirty-nine percent of the overweight American population will now actually qualify for the category of obese. So that this -- this has real implications in a society where the Biggest Loser is a show, and you know, the implications of obesity being overweight are quite significant.

So I -- and in fact, I saw in the paper today that Citizens Medical Center in Victoria, Texas, has now put in place polices as to whether or not people have to meet certain B.M.I. criteria -- obviously out of date already, but nonetheless -- in terms of their hiring. But I thought I would just go through the literature and check and see what the implications -- and Dr. Shah obviously has a lot of influence on health policy. But I just -- here are some of the things that have just come out since this substitution of DEXA scans for B.M.I. estimates. The first was a rather anguished editorial in the American Journal of Public Health entitled "Not One of Our Own," pointing out that Dr. Shah's research has followed the American path of taking a modest measure such as height, weight, and skin fold, and converted into a three hundred dollar radiologic procedure.

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The American Psychological Association reported that there has been a significant increase in depression for that part of the population who had successfully moved from obese to overweight, but that, quote, Dr. Shah has now moved the goalposts. Bloomberg reported that pharmaceutical stocks are up and that actually one of the sidelights was that airline stocks are up because he's -- Dr. Shah's opened a whole new population of individuals who have to buy two seats.

The Wall Street Journal editorialized that the one hundred thousand bariatric surgeries and two million dollar DEXA scans that will now be part of the American healthcare industry will add seven billion dollars annually to healthcare costs, and this is under the editorial coming out tomorrow called "Shah Effect to Bankrupt Medicare."

And finally, I just wanted to point out that I know you're going to be appearing on a number of FOX News stations, and that the -- the -- the -- here's the question you're going to have to answer is why have you done this to our great country? So I just --.

COMMISSIONER SHAH: Very nice.

DR. STRECK: I just wanted to recognize --.

COMMISSIONER SHAH: Thank you. Thanks.

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(Off-the-record discussion)

DR. STRECK: So I just wanted to recognize the -- the broad range of services that Dr. Shah brings to us, and on a less facetious note, welcome him to the Council. Thank you.

COMMISSIONER SHAH: Thank you. Well, for the record, I will say that the -- the paper, if you should choose to read it, which is available online, does in no way advocate using DEXAs or leptons. It's just about making sure we understand what we're up against. And something as simple as using twenty-four instead of thirty as the cutoff for obesity for women, especially as women age, makes sense.

So I -- I think our scales -- don't throw them out just yet. We don't need to expose everyone to radiation of DEXA scans. It was a convenient sample. But it is -- the implications are there for all of us in terms of understanding the sheer magnitude of what we're up against.

I'll turn back to my report and start with the state budget. We had an incredible state budget this year. A hundred and thirty-six point two billion dollar budget that continues the two-year Medicaid appropriation structure enacted as part of last year's

4-5-2012 - Albany, New York - Planning Council budget and limits annual Medicaid spending to a four percent growth, which is -- you know, promises made, promises kept. And Governor Cuomo last year with the historic reform of the Medicaid redesign committee -- M.R.T. -- Medicaid Redesign Team, had a number of proposals, seventy of -- or -- or so which passed in last year's budget. And this year's budget continues that tradition, expanding on M.R.T.'s accomplishments, including things such as savings for future investments in supported housing, reform of the assisted living program, financial relief for essential community providers and vital access providers.

Also included in this budget are service enhancements for diabetics, women who are pregnant or nursing, and individuals with hepatitis C, the establishment of a primary services core. This is incredible. This is going to really change the nature of our workforce in primary care with this single investment. Enhanced services to promote child health, and a requirement that pharmacy chains provide language-accessible prescription labels. This progressive agenda really invests in exactly the right kind of things, the evidence-based outcome oriented policies that are going to change not only the cost

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curve, but really change the nature of what healthcare delivery looks like in New York State.

Another initiative will extend authorization for the State Dormitory Authority to establish subsidiaries to help healthcare facilities restructure their debt. My thanks to all of you who served on the M.R.T. workgroups and helped develop the recommendations this past year. Your commitment was instrumental in continuing the progress of Medicaid reform and restructuring. I also want to acknowledge Jason Helgerson and the Department's entire Medicaid staff for their hard work and continuing hard work and long hours to make this possible.

Another key budget initiative related to Medicaid is cost relief for localities. The budget addresses the growth in the local share of Medicaid costs by implementing a phased-in state takeover of Medicaid administration expenses currently borne by local governments. Beginning April 1st of 2013, the two percent local cap growth will be reduced to two percent. In subsequent years, the local share growth of administrative expenses will be reduced by a subsequent additional one percent annually. And when this process is completed, New York City and every county in the

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state will no longer have to contribute toward the growth of Medicaid expenses. Local Medicaid costs have been a major concern for counties struggling to meet their fiscal challenges, and this plan is an important step to reduce that burden. When fully implemented, the takeover of the three percent Medicaid growth factor will save counties and New York City one point two billion dollars over five state fiscal years.

The final budget also includes an agreement for the state to assume administrative functions from counties, including the processing of applications for benefits and services. Under this agreement, county employees who currently perform Medicaid functions would be able to voluntarily transfer to appropriate state positions without having to take additional examinations or serve a probationary period. The Department will develop a statement of county interest to determine if there is interest in this initiative, and if counties have the capacity to contract with the Department to continue to perform specific Medicaid administrative functions.

In conjunction with this administrative transfer, beginning this fiscal year and for subsequent years, adequate and county-specific non-federal spending

4-5-2012 - Albany, New York - Planning Council on Medicaid administration will be capped at the 2011-12 appropriation levels. If the aggregate spending is less than the appropriated amount, counties that exceed their caps will be reimbursed proportionally for reasonable administrative costs above their cap. In the current fiscal year, that pool of available money is estimated to be about twenty-three million dollars.

Moving on from Medicaid, another program that people are very pleased with in the new budget is the restoration of thirty million dollars for the state Elderly Pharmaceutical Insurance Coverage program, or EPIC. In last year's budget, EPIC was modified to only cover prescription costs when enrollees reached the Medicare coverage gap, or what we call the donut hole. With the fundraising restoration, seniors in EPIC will not have to pay more than twenty dollars for a prescription, and less than that if they use generic drugs. There are approximately two hundred and ninety thousand seniors in EPIC, and this restoration will provide important financial assistance for them. Turning to public health, last week I issued an order of summary action that banned the sale and distribution of synthetic marijuana products in New York State. These substances include chemically coated plant materials

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designed to mimic T.H.C., the active ingredient in marijuana, and are sold in convenient stores, smoke shops, and tobacco stores as legal alternatives to marijuana.

From a public health perspective, these substances are dangerous. Synthetic cannabinoids have been linked to death and adverse reactions including acute renal failure. They also cause increased heart rates, paranoid behaviors, agitation, seizures, and loss of consciousness. Recognizing the threat to individuals who purchase these products, we issued the order on March 28th to immediately cease the sale and distribution, and instructed local health departments to check for compliance.

We believe most stores and other places that sell synthetic marijuana products will comply with this order. In the event that an entity continues to sell or distribute these products, the Department will ask the State Attorney General's office to initiate a court proceeding.

And by the way, happy National Public Health Week. New York is fortunate to have one of the best public health systems in the country. I think it's actually the best one. The strong collaboration between

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the Department and local health departments is a key asset as we confront critical issues such as the obesity epidemic, H.I.V. and other diseases, and environmental health. Protecting the health and safety of New Yorkers is one of our core functions, and the system performed extremely well during last year's floods.

Those of you who had the opportunity to work with Dr. Birkhead and his staff know that our public health professionals and their partners at the local level do a tremendous job. They are truly committed to improving the health and -- of all New Yorkers. And if you haven't had a chance to do so, this week is a perfect time to give them a call and thank them for their service.

As we develop the new five-year State Health Improvement Plan for 2013 through 2017, the Department will continue to work closely with members of the council as well as of the public to get your input on our new public health goals. That concludes my report.

Thank you.

DR. STRECK: Thank you, Commissioner. Questions, observations? Dr. Palmer?

DR. PALMER: One of the things that I'm questioned by friends and colleagues about is Medicaid

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fraud and the activities the Department and the governor have undertaken to address that. I know philosophically all the words have been in the right place, but functionally, has there been any -- any improvement since the demise of the last Medicaid czar -- Medicaid fraud czar?

COMMISSIONER SHAH: Absolutely. In fact, we are working on draft plans very closely with all the different agencies as we speak. I saw a draft of it just yesterday that had been distributed, so we're getting closer to final versions of making the philosophy into actual policy and practice. I'm confident we'll get there. And just the nature of how the internal debates have happened across the agencies has been very encouraging that under this governor, we will have the problem adequately controlled, but appropriately addressed in the way that it should be as opposed to the -- you know, the one size fits all or let's -- let's cause a lot of damages as we try to fix the problem approaches in the past.

DR. STRECK: Mr. Fensterman?

MR. FENSTERMAN: Yeah. Good morning, Commissioner -- or afternoon as we're getting close to. I have one question or really a statement I'd ask that

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you put on your radar screen, and that is the issue -- one of my concerns is the health of the veterans that are returning from Iraq and Afghanistan. And while most will say that's a federal problem, the fact is that there are -- the citizens -- the veterans who -- coming back who are citizens of the state and residents of the state of New York, we read about some of the acts that they're committing because of sickness from coming back. There are T.B.I. issues, and I know we have a T.B.I. council, but it really only meets three times a year. I think it only has a thirteen million dollar budget, so I don't know that that's adequate. But I would just ask that you put on your radar screen coordination with the federal government relative to our protecting the public health of those veterans. Thank you.

COMMISSIONER SHAH: Thank you. You're absolutely right. I mean, there's no better definition of public service compared to what the vets have done for us and continue to do for us. Certainly, an area of working closer with the V.A. system, which has actually very good centers of excellence where they do have them around these issues is something we can do better on.

DR. STRECK: Dr. Boutin-Foster?

DR. BOUTIN-FOSTER: Good morning, Commissioner.

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Or good afternoon. Sorry. I have a question. In regard to the synthetic marijuana, what are the legal ramifications for individuals who are caught with this? And part two is, are there mechanisms in place for emergency rooms to start tracking the use? Is there -- I guess, the -- the mechanisms used to detect it, is it different enough from checking for marijuana in the urine let's say? So it's tracking use and then individuals who are -- who -- who are caught with this.

DR. DERING: Thank you. In terms of the legal ramifications, there are five substances that the federal government has put on the federal Schedule One on an emergency basis, so that criminalized those five substances. Dr. Shah's order covers those five plus any other synthetic marijuana products. With regard to Dr. Shah's order, that's a civil order. It doesn't criminalize the substances in New York.

So with regard to criminal charges, if it was known that someone had a substance that's on the federal Schedule One, then the D.E.A. would have authority to take action with regard to that.

Dr. Shah's order prohibits the sale and distribution of the products not only in terms of entities, but individuals themselves. So the focus is

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to try to stop at the retail level, so the counties are assisting us in serving locations where they think the products might be sold. If there was a circumstance where it was -- an individual was known to be engaging in the sale and distribution, we would get that information from the counties, and we could assess that, so does that answer your question?

COMMISSIONER SHAH: And as to the second part of your question, you know, to the extent that this has been a public health emergency that people had no idea of -- or unless you were affected directly, you had no idea. The -- the spotlight that's now on these agents is -- is bright. And just today, coming down the elevator to this meeting, I heard from a family member who said thank you because this was devastating our lives, and this was the excuse we needed to make sure that the family member doesn't take these -- these agents. And it's making it extremely hard to get them. I'll turn to Dr. Birkhead for another comment.

DR. BIRKHEAD: Well, I was going to actually address some of this in my remarks as well, but you're correct that the -- the normal urine tests for T.H.C. do not pick up some of these synthetic products, so part of this has been an education of the emergency rooms to

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take a good history and -- and also to look at the symptoms that are being presented.

And in terms of tracking, we -- we actually use data from the state's poison control center -- centers to try and -- and track this, and this actually was part of the impetus that led to the order. And just to give you some information, in the -- in the upstate area outside of New York City, in 2010 there were twelve calls related to these substances. In 2011, two hundred and fifteen. And this year, already a hundred and twenty-two. So we're already halfway to -- to last year's total, so that this is actually a new phenomenon that has just taken off in the last probably six months in -- in many -- many parts of the state. There's similar numbers from -- from within New York City. And the other alarming factor here is that half of the calls relate to kids under the age of nineteen in the -- you know, being seen and -- and having a call made to the poison control center usually from the emergency departments. So this -- this is -- seems to be particularly targeting younger -- younger kids. These products are labeled as incense or potpourri, but I think the wink that goes behind that where -- where they're being sold is that this is -- this is a

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substitute for -- for marijuana that's legal. And so this -- this -- I think the other thing to mention -- Jim -- Jim didn't mention it, but the five substances on this federal Schedule One, as soon as they got on the federal Schedule One, the chemists who are out there in the cottage industry making these substances immediately switched chemical, you know, formulas and -- and made something else that didn't fit the -- the -- the -- the -- the Schedule One requirements.

So this order, as I understand it, is broad and applies to -- not to necessarily specific chemical substances, but any that fall within this framework. So it's not -- it wouldn't be possible to design a new -- you know, add a new methyl group here and then sell it as -- as something not covered by the order. So it -- it -- I think, you know, the problem is -- is acute. It's new. We -- we have had some potential calls potentially with deaths related or acute renal failure, so it's not simply psychotic or other types of reactions that we're seeing. And it -- it really is taking off, so this -- I -- I think we felt action -- Dr. Shah felt action was critical. And we -- you know, what the federal government had done was not addressing

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the full scope of the issue.

DR. STRECK: Other comments? Dr. Bhat?

DR. BHAT: Your order, does it include increased penalties if these drug -- these drugs are sold near a school, let's say the proximity of school?

DR. DERING: For a little bit of background, the -- the Commissioner's order is issued under Section 16 of the Public Health Law, which gives the Commissioner the authority to, among other things, prohibit certain practices. So it's a prohibition on these practices. And with regard to any violations of that, as Dr. Shah had mentioned, we have the authority to go to the Attorney General's office and seek a court action to stop.

But in connection, it -- it's not a -- an ability to criminalize. So in connection with provisions that might relate to schools and fines of that nature, this authority isn't of that nature. If we went to the Attorney General's office to seek compliance, there are some provisions with regard to -- to penalties, but really this is a public health measure to -- to stop the -- the sale and distribution of these products.

COMMISSIONER SHAH: And -- and we've heard from

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business owners who say, you know, I'm only selling this because the guy down the street's selling it. I really know what bad effects it has, and I don't want to, but it's -- you know, it's a competitive thing, so thank you for -- for banning it because that -- it levels the playing field once again.

DR. STRECK: Other comments or questions? Yes, Gus?

DR. BIRKHEAD: Sorry. Gus Birkhead. Just one other comment on this subject. Dr. Shah mentioned our partnership with the local health departments, and they are the ones -- for the most part who have gone out and served the order. And we've kept a track, a tally of those, and as of the day before yesterday, we had twelve hundred and sixty site visits by the county health staff where the order was delivered, six hundred mail -- contacts by mail and -- and phone. And we found around the state a hundred and sixty one locations where these products were being sold where they now have been removed from the shelves.

So the county health departments continue to go out and find locations. And I think in some cases, members of the public are -- are calling in and letting them know where -- where to go to find these, because

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these -- it's -- there's not a clear distribution chain with these. We can't go to the distributor and find out where they've gone, so we -- it's -- it's -- have to -- to really -- it's a shoe leather process of being out and looking in the -- it's often sold in gas stations or convenience stores. So there is quite a bit of activity ongoing at the county public health level to execute and carry out this project.

DR. STRECK: Other comments or questions on this topic or any other topic for the Commissioner? Thank you. Thank you, Commissioner.

We'll now turn to Mr. Cook with the report of the Office of Health Systems Management.

MR. COOK: Thank you. I think that one issue that I want to bring an update to you is Peninsula Hospital. I mean, obviously, you approved a trustee to be the governing authority trustee -- the governing authority at Peninsula last week. Peninsula has submitted a closure plan, which we are close to approving. What turned the events so quickly were basically two issues:

We met with the trustee to review what would be the process in order for them to be able to have a lab that would be in full compliance. And that process,

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unlike some of the reports you may have seen, is really a question of months. It is not a question of days or even of weeks. And because they are essentially out of money now, there was no way to continue to keep this hospital open, in her judgment, and we do not disagree with that.

I think the second issue that has been -- we've been doing -- going back and understanding this hospital has been closed for six weeks. And we try to understand what has been the practical impact on surrounding providers and on the community. And what we've seen during that six-week period is -- remember, we closed all admission. We closed all procedures being done. We allowed for emergency walk-ins to continue.

The average number of people who were frequenting the emergency room were approximately twenty-five to thirty-five a day, with one or two transfers necessary to surrounding hospitals. So that volume was not a difficult volume to redirect. We met and talked with the Fire Department of New York who controls the ambulances, and again, there's been various reports out there. But the truth of the matter is that during the -- the month that Peninsula was closed, the next hospital, St. John's, which did see increased traffic,

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but the number of hours that they were on diversion for ambulances was less than the month that Peninsula was open. So we -- we do not see the practical impact. That is not to dismiss the -- the hardship on employees and the hardship on the community who've depended upon this hospital over the years.

But I think coloring our decision to accept the closure plan was also a recognition that this is the second time in six months that we basically closed that hospital because of financial and quality issues. Back in August, we had to close admissions and close procedures because they could not demonstrate to us that they had sufficient supplies, could have medical waste pickup, or even have clean linen delivered. So I -- I think, while this was a difficult decision both for the trustee and for us, we are moving forward on that based on those facts. So I think I -- I will leave that there.

We are also in the process of accepting a closure plan from Sheehan Hospital in Erie County. Sheehan is a very small hospital that has a small complement of substance abuse beds. It did at one point have medical surgical beds, but those beds have been decertified.

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Again, this is a small hospital that found itself unable to continue to meet payroll. They do have a primary care clinic there that's relatively new that we're hoping that we will have some providers interested in. There also is an adult day home that it will find a place to relocate, and we're working on that relocation. So those are the two most pressing issues, quite frankly, that we've been dealing with over the last week since we've met. Happy to answer any questions.

DR. STRECK: Mr. -- Dr. Berliner?

DR. BERLINER: Rick, as I'm sure you're well aware, Crain's is suggesting that there might be a -- I'm not sure if the white knight term is correct, but someone from the outside, a private investor willing to put some money into Peninsula. Could you -- independent of whether that's true or not, what would the process be if that were to happen? And specifically, what would the role of this council be --

MR. COOK: Yeah.

DR. BERLINER: -- if that were to happen?

MR. COOK: I mean -- again, I mean, right now, we're -- we're in that unique period of time when, remember, this is an entity that's in bankruptcy. And so the decisions relating to, you know, financial

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feasibility or the relevance of whether or not there really is a twenty million dollar investment is really being sorted through by the trustee, the governing authority, and making a determination of whether or not the offer is credible, and what are the conditions relating to that offer.

I mean, I think one of the things that is -- is an issue that we continue to hear, that there are a lot of people who might be interested. It's uncertain whether or not there really are dollars behind that, but all are conditioned on the lab immediately opening and the hospital immediately opening. And we've made it very clear, that is not something that we can do. So I haven't had an update as of this morning, but I -- I have not seen, nor had in my discussions with the trustee, heard that there was a credible proposal that recognized the events on the ground.

And the role of the Council, I mean, I -- I -- I think, you know, right now, again, it's -- it's murky water. I mean, if there was a proposal that was going to infuse capital into this facility, I mean, they would not be able to change the governing authority without coming back to us in a discussion. They would not be able to change the complement of services without coming

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back to us. But the most critical issue really is, and why this council probably would not be involved in it anytime soon if it was a credible proposal -- is we are still in a regulatory process.

And so it doesn't matter even if the -- the proposal was credible, that regulatory process, which is evaluating the lab and determining whether or not that can operate at an efficient level and a quality level, has to be solved. And -- and that cannot be solved in a matter of days or weeks. That is going to be months. Yes?

DR. STRECK: Dr. Grant?

DR. GRANT: Commissioner Cook, with regards to Sheehan in Buffalo, New York, I assume you -- I have two parts to the question in terms of working with the county and some of the other large care providers in picking up the services to be lost in that community. I assume that's going on.

And secondly, I know there was a large contingency of dental care services which were under provision, and the last report I'd seen had not addressed what's going to happen to that component of the services -- and hope you can comment on that.

DR. COOK: I think -- I'm not aware of the

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dental services, but I'll go back and check. I mean, as -- as you do know, they have a very good physical plant for the primary care center. It has not been maximized in the past, and there has been interest on the part of some of the providers in the community to come in, but they -- they never seemed to cement. They never seemed to come together. I think now that the community is -- it -- the hospital is going to be closing, we have seen other interest, and the regional office is talking to folks about any transition. On the dental, I need to go back and check, Dr. Grant. I just don't -- I don't know anything specifically relating to that service.

DR. STRECK: Dr. Palmer?

DR. PALMER: In the last meeting we had, it was clear that this downward spiral had begun, but the suddenness of the closure caught me by surprise. And I -- I thought back to, was there something I missed in that meeting that was a key to this sudden closure? I couldn't figure out anything, and I think in listening to you now, I -- I just have a question. Because if a facility doesn't have a functioning lab, and I'm assuming that's STAT as well, the decision to leave it open for walk-ins, I think that may have led me to

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believe there was more chance that something positive might happen than this particular change.

Could you tell me about how that happened? Because that is a little confusing to me.

DR. COOK: I -- I think -- and it's -- I'm going to be absolutely frank as -- as -- as I can be, but when we're dealing with a hospital that is on the cusp of closure, the worst thing that can happen in a public event is to -- to indicate that it is going to close if we don't know for sure. Because once the word is out that it is going to close, then every -- every vendor, every -- you know, employees start to leave, et cetera. So at the hearing, the -- the critical issue was -- I think I tried to explain was we needed a neutral party to help us evaluate whether or not it was possible for this hospital to exist.

And what we had not done at the time is fully brief the trustee on the seriousness of the lab. She knew the lab was closed, she knew it was serious, but she was getting mixed information concerning of whether or not the lab could be started up quickly or whether or not it was a longer period of time. And that really was the core issue. And I think, to her credit, she talked to outside parties. She talked to other healthcare

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systems who -- and to try and determine if anyone might be interested in coming in and running it.

She evaluated whether or not there was an option for a private lab to come in, and after those discussions, came back to us and said, look, here are some options that I'm looking at. Do any of these work? And our answer was, those options could work, but they cannot work in a matter of days or weeks. They -- they -- they will take months before you can get this up and running. And -- and that really was the core distinction. And I -- I apologize if I -- if I -- if that didn't come across at the discussion. Does that answer your question, Dr. --?

DR. STRECK: Mr. Fassler?

MR. FASSLER: On a different topic, can you give us a little update on the Brooklyn Hospital situation?

MR. COOK: How little? I -- I -- I think, you know, as you know, a critical element of looking at Brooklyn was a report that came out directed by Dr. Shah to look at possible options to strengthen the Brooklyn hospitals. And those options included the linkages, the integrations, potentially Wyckoff, Brooklyn, and Interfaith. And they also included potential linkages

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All those integrations are reflected in applications for HEAL funding that is before the Department now that we're evaluating. So I -- I can't really -- I have to be careful of how I -- I make this point. But I -- there are ongoing discussions with all of those hospitals to monitor where they are financially and to try and stay close in the decision making that they are making so that they do not get out in front of any problem -- so that they do get out in front of problems.

I think there's a -- there -- there is a real interest in putting together those integrations. However, as all of you know, when hospitals begin talking about integrations, it often goes to who will be on the board, who will be the governing authority, and those are challenging issues. And overlaid with that are the very challenging issues of the level of services that would need to exist in each of these sites. So those discussions are ongoing both among the hospitals. They're -- they are being led by -- at the highest level by Jim Introne. And you know, we -- we continue to work through them and -- and the HEAL applications.

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DR. STRECK: Dr. Bhat?

DR. BHAT: Mr. Cook, let -- let's go back to Queens. One of these issues that we have if Peninsula closes, that will be the fourth hospital to close in the last three -- three years. I think we had Parkway, St. Johns, St. Mary Immaculate closed. I think total number of beds probably might be about eight hundred fifty. And with this, it probably is going to be more than a thousand beds just disappearing from the county. One of the problems that we -- we were looking at when these three hospitals are closing is what's going to happen to the county as far as providing the care, and I've gone back and looked at it. I think initially for about four to six weeks, we had a lot of increase in admissions to some of the other hospitals like Elmhurst and Jamaica Hospital, and the E.R. visits went up. At the end of the year, it looks like all those admissions just simply evaporated. I think it did not. I think even the emergency room admissions went up and came down. Do we need all these hospitals? I think we closed four hospitals in a county, nothing happened, the county did not fall apart -- is my comment on that.

MR. COOK: The only comment I will say is you -- you are absolutely accurate that what we see

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consistently is where there are hospitals who are often struggling and you dig into understanding the types of admissions and the emergency room visits, many of them are not necessary. If you looked at, for example, Peninsula Hospital, you would find that eighty percent of the individuals who live in the five ZIP codes that surround Peninsula Hospital, and that includes Medicaid and Medicare, went elsewhere for care. So individuals were choosing not to go there for care.

And approximately fifty percent of the emergency room visits were visits that probably could have been handled in the community if there was better primary care. So I -- I think in the hospitals that you mentioned, while there have been four hospitals in Queens that -- that have closed, what we always see is a spike in emergency room admissions when there is a closure, and then we see a gradual transition to stability.

We -- we have -- we know that hospitals are -- are -- are -- their admissions are staying up, but it is interesting to us that when you look at Queens, for example, we are not seeing significant requests for new beds in Queens. So despite the closure of those hospitals, we are not seeing a demand for inpatient

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DR. STRECK: Dr. Sullivan?

DR. SULLIVAN: Yeah, just speaking -- just speaking from Queens, I agree on the inpatient side that there's spikes, and then they level off. But at least from the public sector hospitals, which are Elmhurst and Queens, the increase in the E.R. visits has continued, and has continued to gradually go up. And I think that's an indicator of the need for primary care in those areas because obviously we're getting more E.D. visits, but they are not generating admissions. So it's probably not that we need beds from those E.D. visits, but we probably do need primary care.

And again, for the -- primarily for the Medicaid and underserved population, and it's a similar phenomena in our clinics where we have an -- we don't have the resources to do it, but an increased number of new people coming in. So I think that's what you see. A lot of these hospitals had clinic services, and a lot of them served this revolving use of E.D.'s. And I think that that is a need in the borough of Queens. We are still facing that need.

DR. STRECK: Are there any comments from the underrepresented boroughs thus far? All -- all quiet in

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the Bronx?

MS. HINES: That would be me. I -- I actually have a different topic. Just a brief status report on the activity around the CHA expansion R.F.A. I note that we have a special establishment committee meeting in May. The R.F.A.'s were due March 9th; the C.O.N.'s on April 20th. What will we be doing at that May meeting?

MR. COOK: You'll be very busy. We -- we will have the first round of applications for review, both those that we are recommending approval for as well as those that we are not recommending. So as -- at the request of the Council, you will see all the applications. So we -- we are still, I mean, as you can imagine, we -- we are now, you know, going through and sorting through, so we -- we need to think through the format. We need to think through the types of information to get to you so that you -- will help you make a decision. And -- and we have not just done that yet, Vicky.

MS. HINES: No, I -- I appreciate that. That -- that was the nature of my question is that it's such a short timeframe --

MR. COOK: Yeah.

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MS. HINES: -- between the submission of the certificates of need. So clearly whatever comes to us for review will not be the usual process.
MR. COOK: No. It -- it'll -- it'll be a little bit unique.
MS. HINES: Okay.
DR. STRECK: Other questions or comments for Mr. Cook? All right. Thank you.
As I mentioned, Ms. Block's report has been -- will be on the web. Dr. Birkhead notified me that he's essentially provided his report in the discussion about the synthetic marijuana, so we will now conclude this session with the report from Mr. Helgerson on the health insurance programs. Jason?
MR. HELGERSON: Thank you. It's a pleasure to be here once again. Just a brief update on a number of different topics. First and foremost, the Medicaid global spending cap. I think, as I reported to -- to this group last time when I -- we were all in New York City, that we were in a good position at the time, although there were still a lot of factors out there to determine whether or not we were going to be able to finish the year.
Underneath the global spending cap, while we

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have not yet completely closed the books for the year, we look to be in very good shape to finish the year just slightly under the global spending cap amount of fifteen point three billion dollars in spending. So we think that hopefully in the very near future we'll be able to make a more formal announcement on this, but a lot of work has been put in, not only by officials across multiple state agencies, but also the provider community who have stepped up in a variety of different ways to help control costs.

One small example of that that I want to just mention -- acknowledgement. I think as people are -- are aware here, lots of different initiatives, seventy-eight in total initiatives launched as part of the Medicaid redesign team recommendations. In total, they took -- generate savings of about two point two billion, state share, or a little over four billion in gross savings. And some of those initiatives did not get federal approval until the -- the until late summer, and so we had to implement some of these on a retrospective basis back to the beginning of the fiscal year, which creates some challenges -- cash flow challenges for certain types of providers.

We are taking this amount of money out of the

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So overall, we feel that at the end when we actually close the books, we're going to feel that our first year of living within the global spending cap was

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a good year. And then we were able to contain costs and set ourselves up in a good position, as the Commissioner said, for two more years under state statute of having a global spending cap, which I think as I said before, has really been a positive for us in terms of casting a lot of light onto the Medicaid program.

I think the transparency in terms of how we've been tracking the cap has been very good for the Department. It's been good for -- for the provider community to be able to see the program at a much greater level of detail than has been seen in the past. And so we look forward to another year of -- of managing under the global cap.

Next, in terms of the budget, the Commissioner gave a pretty detailed description. Just a couple of additional highlights that I wanted to mention. In Medicaid Redesign Team Phase Two this was there we had ten work groups, a hundred and seventy-five stakeholders put together roughly around ninety different recommendations. The governor was able to in a cap-neutral fashion to propose twenty-five specific M.R.T. Phase Two recommendations. Twenty-four of those recommendations were actually approved by the -- by the legislature.

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As the Commissioner said -- he -- he mentioned a couple of the major ones. I'll just highlight just a couple. We talked a little bit about taking over Medicaid administration from the counties. This is a very significant structural change, not only for the program, but also in state/local government relations. Currently fifty-five hundred local workers do Medicaid administration all across this state, and that over the next five years, the state's going to take on those responsibilities.

Our belief is that we can do this far more cost effectively. We'll have greater continuity in terms of the -- the quality of the service that's provided across the state. It is a major implementation, and it is also closely tied to the implementation of the health insurance exchange, because the entity that will be managing Medicaid administration from a back office standpoint, will also be managing the day-to-day operations of the health insurance exchange. So we think it's a very important initiative that we were able to get the legislature to approve and will be a major undertaking for the Department of Health for the next several years.

Also. just supportive housing, I think one of

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the -- the things that we heard loud and clear throughout the M.R.T. process was the link between access to stable housing, particularly supportive housing for those high-needs, high-cost Medicaid patients and Medicaid costs. And what was -- we achieved in Medicaid Redesign Phase One and was put in the budget last year was that beginning this next fiscal year, we would actually have resources available through the Medicaid program to invest directly in housing. Initially, it started at seventy-five million. When we came out the other end of the budget process, we're now down to an -- we have -- still have an appropriation of seventy-five million, but the cash behind that appropriation is sixty million, but still a significant opportunity for the Medicaid program to really be an active partner with other agencies, both the state and at the local level, to expand access to supportive housing. And so we're very excited about that opportunity.

And then, lastly, also in the supportive housing area, we also got an exciting new initiative that was an M.R.T. Phase Two recommendation, which was to allow the state to reinvest savings when institutions close -- institutional providers close, beds close, that

we can take some of that savings and reinvest it into supportive housing. So not only would we be able to use the sixty and potentially in future years seventy-five million, but further expand that pot of money to be able to invest even more resources into supportive housing. We also hope in the future to be able to get these dollars matched by the federal government, which could in essence double the amount of money that the state has to support supportive housing. I think the workgroup that worked on this issue set a goal for the state of trying to come up with around a quarter of a billion dollars a year of reinvestment. But while we have still work to do to get to that amount, we feel like we're making definitely a positive step in this budget.

Next, just to mention briefly, I encourage you to go to our Medicaid Redesign Team website to see our proposal around dually eligible individuals. I -- I think, as this group is well aware, this is a population that roughly seven hundred thousand individuals who are low-income seniors and -- and people with disabilities enrolled in both these programs. Historically, Medicaid and Medicare have had a hard time getting on the same page with one another in terms of working together to find ways to improve the quality care for these patients

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and generate, we think, potentially substantial savings. One actuarial study that was done a couple of years ago highlighted the possibility up to a billion dollars in -- in savings for the two programs if we were able to better coordinate and manage care for this population. We have been working with the Duals Initiative Office at H.H.S. for the past number of months. We were one of fifteen states to receive a duals planning grant, and we were able to put out recently a paper that outlines a multistage process to be able to begin to do effective care management for duals. And we are now in a period where people are able to provide us with comments on our recommendations.

I will highlight the first phase of that, which would be to build off of our efforts to move to manage long-term care. I think, as people are well aware, we are moving this summer into an environment of managed long-term care, and we will beginning down the city moving people out of the fee-for-service home and community-based programs into managed care using existing partners. And -- and we're also reviewing applications for new partners throughout the state. But we plan to leverage that program in coordination with Medicare to add the Medicare benefit to those

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managed-care contracts. We think there's a major advantage to the State of New York because we already have partners who are -- are very experienced in managing the long-term care benefit, which traditionally is what most managed care organizations across the country are not experienced in. And our proposal in this first phase is to, in essence, convert our managed long-term care population beginning in 2014 into fully integrated managed-care products starting down in New York City and Long Island and probably Westchester where, at those points, we will be in a mandatory environment.

We think that could lead to roughly eighty thousand dual eligibles moving into a fully integrated managed care product, and so we're particularly excited about that first phase. And then the second phase, we'll begin to look to move to the rest of the dual eligible population over time into other forms of -- of integrated care management. You know, this is a population that's responsible for roughly thirty-six percent of all Medicaid expenditures and about forty-eight percent of all Medicare expenditures.

So if we can find ways to -- to better manage the needs of these -- these particular members, we think

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that we have the opportunity to achieve our dual goal, which is to not only make this program more cost effective and sustainable, but also to really improve the lives of -- of these individuals who have very complex needs.

And then, lastly, before I open up questions, I -- also happy to announce that after a year, the Office of Health Insurance Programs has hired a deputy, which is something that makes me happy every time I think about it. We have been searching around for -- for a while now, but Elizabeth Misa, who's in the audience, has agreed and was appointed to join the Cuomo administration as the deputy director for the Office of Health Insurance Programs. She brings more than a decade of experience in New York Medicaid policy issues in a variety of different positions, including most recently as a lobbyist, but then also worked for 1199 as a research analyst and before that a number of years working for the assembly Ways and Means Committee, so is very familiar with the New York State budget process, which is very important for us, given the importance of that process with the Medicaid program.

So with that, happy to answer any questions.

DR. STRECK: May I ask that Ms. Misa identify

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herself out here so that -- welcome. Thank you. Questions for Mr. Helgerson?

DR. PALMER: I have. I -- go ahead.

DR. STRECK: Go ahead, Dr. Palmer. You were first on the court.

DR. PALMER: I'm sorry. Supportive, supported housing? Which -- I'm sorry. I didn't hear.

MR. HELGERSON: Supportive housing, yes.

DR. PALMER: Oh, and -- and the resources that you were -- you were talking about sound formidable, but do they at all match the need?

MR. HELGERSON: The answer is, right now, it does not match the need. But the thing is that what we're trying very hard to do and at the direction of Mr. Introne, we have formed a multiagency effort around these dollars. There are a number of other agencies, both the state and the local level, who provide resources to expand access to affordable slash supportive housing. And so the idea is that we want to make sure that the -- our Medicaid funds are spent in coordination with those other programs, so that we can expand their scope and impact.

You know, in -- in the case of what -- just to make clear in supportive housing and what it is, really

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what it is -- is not only is it access to a housing that -- that low-income individuals can afford, but at these housing locations, they provide other services, including healthcare services or behavior health services, that are essential for some of our patients if -- if we are going to -- to keep them well and keep them out of hospitals, keep them out of nursing homes. We have a number of very successful programs of this type, not only in New York City, but in other parts of the state, and -- but the issue is -- is that there just simply are not enough, you know, apartments or other housing environments for -- for people, and we need to look for ways to expand the number.

DR. STRECK: Mr. Fassler?

MR. FASSLER: You know, this morning, we talked about Albany County and the impact of managed care. Do you have a time schedule moving patients in a nursing home into mandatory managed care yet?

MR. HELGERSON: Certainly. I think, as we talked about, we're sort of on a three-year glide path of phasing out fee-for-service Medicaid. We envision -- and -- and what you will be seeing shortly is we're going to put together a multiyear very detailed matrix which will show all of the populations and services that

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will be moving from fee-for-service to managed care, so we hope to get that out within a few weeks.

But the -- the nursing home population sort of broke into two different categories: One of the duals, which is the vast majority, and then the second group are the -- we call the Medicaid-onlys, meaning that they are not also enrolled in -- it's a much smaller population. It's a younger population, but in terms of both those populations, we see them really as a year, two year, three, phase-in schedule.

There are a number of issues that need to be resolved. I think it was mentioned earlier, discussions about capital financing. There are concerns in the industry about the fact that they may have made business decisions about their facilities, invested in facilities in the past, and are concerned about managed care companies penalizing them because their rates are a little bit higher because of those past capital expenditures. So there are a number of issues that need to be resolved.

To some extent, I would mention, though, by -- by moving to mandatory managed long-term care for the home and community-based population, does -- and that -- those benefits includes the nursing home benefit over

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time that sort of somewhat closes the door to fee-for-service nursing homes in the sense that individuals who need long-term care when we are mandatory will go through those plans first before they get into other services, but we still will have the population that are in -- in nursing homes. We will not want to disrupt them, so we'll have to establish continuity-of-care provisions because we don't want people having to move out of nursing homes in which they -- they are stable and getting the services that they need.

DR. STRECK: Dr. Sullivan?

DR. SULLIVAN: First of all, I think the housing -- the news on housing is terrific, and thank you so much for putting that in. It's something we've been needing for so long. I would hope that -- you're probably going to do this, but there are certain populations that are really hard to place that are particularly difficult and that our housing system has traditionally not had enough supports in those supportive housing to help them. And I would hope as we do this that we try to establish some of that, because sometimes you need a little more support than we would traditionally put there to get some of these very

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high-risk patients actually housed, so I would hope there would be more flexibility with some of that with the new housing that's coming down.

MR. HELGERSON: Agreed.

DR. STRECK: Dr. Bhat?

DR. BHAT: Mr. Helgerson, I think the dually eligible at the present time, it says they may join managed -- managed care. Do you foresee a time in which the state would come back and say that mandatorily they have to join what kind of time period that we are talking about?

MR. HELGERSON: Absolutely. And in fact, what was -- it's going to begin implementation in July -- is mandatory managed long-term care for dually eligible individuals. And so for individuals who are in home and community-based long-term care, beginning in New York City and beginning a multiyear phase-out across the entire state, we will require that where we have, you know, enough plans to meet, you know, the access requirements, that individuals be required to enroll in those plans. So we are moving forward to mandatory managed long-term care. That was a policy decision that was made last budget. It was reinforced in this most recent budget. And that is the direction, and it is

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beginning on a mandatory basis in July.

DR. BHAT: But people that are out of the community, they're not on long-term -- any kind of care, are they also going to be forced to go managed care?

MR. HELGERSON: Good question. And what you'll see -- and I encourage you to look at our dually eligible initiative whitepaper that is available on the website. We do envision that beginning in 2015 a more expansive move to mandatory managed care for dually eligible individuals. Our focus, first and foremost, are on the long-term care population because that's really the population that has been driving most of the cost growth in the Medicaid program.

But once we complete that initiative, we -- we anticipate that those -- sometimes they're called healthy duals, although they're not necessarily so healthy that they do have significant needs. Most of those needs and those costs are not borne by the Medicaid program, but are borne by the Medicare program. We think that in the long run, that population will be better off in fully integrated managed care because they're only really one health incident away from needing long-term care services. And if we can get them into fully integrated managed care, we could have, I

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think, a greater continuity of care and a plan that's really contractually responsible for trying to prevent those kind of health instances from occurring in the first place.

DR. STRECK: Dr. Berliner?

DR. BERLINER: Mr. Helgerson, do you make any distinctions between the various subcategories of duals in -- in -- in these plans? Are there some that apply just to the SLMBs and QMBs and all the other types?

MR. HELGERSON: That -- that's a good question. For instance, one of the issues we have is we have some managed long-term care plans today who specialize in certain subset populations. And so one of the -- the -- the issues that we're looking at that we want to continue is to allow those plans to continue to sort of -- sort of specialize. Like the young physically disabled, for instance, is a -- is a population when we have a plan down in New York City that's very good at -- at managing that population.

The other distinction we are making is for developmentally disabled individuals who are part of the state's developmental disabled system, which is a very large and complex system, one of -- the -- the largest of such system in the country. And that population is

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being treated separately, and we're pursuing a waiver and -- and -- and -- and working together with the Office for People With Developmental Disabilities, O.P.W.D.D., on a -- on a waiver there. But the direction that we're going from a policy standpoint for -- for -- for that subset of the population is very much the same thing.

We're proceeding with a managed-care model, managed care plans that will be uniquely structured and uniquely qualified to meet the needs of that population, but the general direction away from fee-for-service to managed care is the direction we're going program-wide.

DR. STRECK: Other comments or questions for Mr. Helgerson? Thank you, Jason.

MR. HELGERSON: Thank you.

DR. STRECK: We'll now move to Ms. Rautenberg, who will give a report on the Committee on Public Health.

MS. RAUTENBERG: Good afternoon. The Committee on Public Health has been meeting with the Committee on Health Planning in a series of discussions about changing their certificate of need program that I know Dr. Rugge's going to report on. What we've been particularly focused on in these conversations is how do

we weave in a more integrated look at population health when we look at certificate of need programs, which we would be doing cutting edge work were we to be able to do that. And I think that will probably be part of our conversations more in the fall than it is right now. We also have established an ad hoc committee to work on the State Health Improvement Plan. It involves the Committee of Public Health, plus a variety of stakeholders throughout the state who come from business, labor, community-based organizations, disease organizations, county health departments to update and revise our State Health Improvement Plan. You know, we've been working on the prevention agenda, and it expires. The last prevention agenda expires in 2013, so this is the revision of that.

We have gotten, whether or not this is Public Health Week, superb support from Dr. Birkhead and Ms. Pirani, and we thank them for that. We've established a framework. We've established a vision. Of course, our vision is to be the healthiest state in the nation, and we've developed priority areas. We are now in the process of having our ad hoc committee members vet this -- skeleton is too small a word, but this skeleton of what the plan will look like with their

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And so this is going to take us for the next probably month and a half in terms of getting feedback from a much larger group of people in terms of are we on the right track or what are we leaving out and what can they suggest? Anyone on this committee who would like to take a more significant look at the skeleton of the next prevention agenda is more than encouraged to do so. And if you have constituents that you would like to vet this with, we are happy to facilitate that and maybe even provide a speaker for those events. So that is where we are right now.

DR. STRECK: Thank you. Questions for Ms. Rautenberg? Thank you. We'll then move to Dr. Rugge, who will update members -- update us on the Health Planning Committee.

(Off the record)

*3 DR. RUGGE: We convened in a -- in a special extended committee session on March 21, and at that meeting brought a statement of the mission and vision for C.O.N. as well as an articulation of the principles for redesign to high polish. We then had an introductory discussion regarding health planning. And

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we're helped by a paper -- a briefing paper prepared by Art Streeter at Finger Lakes H.S.A., and with that as background certainly developed a shared understanding that health planning is -- needs to undergird the C.O.N. process going forward, that we need some reconstitution at all levels, community, regional, and state levels. How to engender that remains a project at least for the fall for us.

We then moved onto a discussion of a grid of some twenty-two proposals for potential streamlining of -- of -- of the C.O.N. for consideration by this council on June 7. The discussion was, as consistent with everything this council does, energetic, robust, well informed, and very complicated. It -- the pros and cons were -- it had been outlined for us by the Department. On the basis of that discussion, staff is reformulating and reworking those proposals which would be brought again in an even longer marathon session on May 9 in the city to hopefully come to near final form for a final vote on yet another committee meeting on May 24. To say the obvious, all members of the Council and the public are really welcome and encouraged to attend those sessions. They're exciting discussions.

The following day, on March 22, we came together in

4-5-2012 - Albany, New York - Planning Council joint session with the Public Health Committee on the strength of the recognition -- the integration of medical care and behavioral health services as a key priority as we proceed with C.O.N. starting with a fundamental question of what does integration really mean after all? To help answer that question, we were fortunate to have Commissioner Shah invite his colleagues, Commissioners Gonzalez-Sanchez, Hogan, and Burke, to describe their commitment to integration, their understanding of the -- both the benefits and -- and also the barriers in doing so, to essentially frame our work going forward in terms of removing any C.O.N. barriers or promoting a more proactive approach to those -- to those service integrations.

All of this leads -- that what -- what has been transpiring is a bubbling up of -- of all kinds of issues leading to more fundamental redesign. In fact, I think if there's any key observation from all the discussions, it is there is very little in the C.O.N. process to simply strip away and say we don't need it anymore. The -- the more fundamental -- more fundamental issue is what within C.O.N. can better be transposed to other parts of the regulatory system? Licensing, for example; self-certification, for example.

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And -- and so redesign really involves addressing the -- the mosaic of how to redesign the regulatory system in the face of very dynamic change within the delivery system as a whole. With that, the list of issues included, as I said, service integration, how to assure a continuum of care coming back to reconsider what it needs and what criteria there should be for freestanding E.D.'s, for upgraded D. and T.'s, so that community by community there is the availability of a whole range of services and facilities that -- that could be appropriate.

How to address the availability of capital and how to mobilize capital financing for those new facilities or for the revisions of ones that -- that now exist. How to address through, again, C.O.N., and by extension, the regulatory process, all the new forms of organizing health services. It includes regional coalitions, the coming together of A.C.O.'s, perhaps, and coming back to readdress the requirements or the expectations for various kind of parenting relationships, including passive parents.

I think we saw this morning with the Albany County Nursing Home how in this period of eighteen months everything seems to have changed. And so the

4-5-2012 - Albany, New York - Planning Council expectations and the criteria laid out in the fall of 2010 no longer seem fully applicable in this day and age. So again, part of the challenge is how to do a redesign for our moving target, and knowing that the redesign is not a onetime effort, but the beginning or the restarting of a -- of an ongoing process of -- of looking at how to keep reformulating the system and planning for it and then certifying those changes in accord with an updated understanding of public need, financial feasibility, character and competence, and such other matters.

We pause there for -- and I -- I believe you mentioned that we have a stroke designation to do, and I don't think -- we do not. No? Okay. I did not miss that.

DR. STRECK: Okay. I did say that. I stand corrected. Thank you. It's very clear the Health Planning Committee has been the most active of all our committees of the Public Health and Health Planning Council. Questions for John?

DR. RUGGE: Everyone is stunned, right?

DR. STRECK: Well --

DR. RUGGE: Or intimidated?

DR. STRECK: -- we have a lot of meetings

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We'll then move to Mr. Warner, who will update us on the new legislation regarding certificates.

MR. WARNER: Thank you, Mr. Chairman. Good afternoon. Chapter 552 of the New York State Laws of 2011, which became law on September 23rd of 2011, required the New York State Department of Health and the New York City Department of Health to implement a certificate of stillbirth. This law took effect two weeks ago on March 21st. This was the first new vital record certificate created by the Health Department since the certificate of fetal death was created in 1967.

The justification for the bill was that many families who had suffered a stillbirth wanted a certificate acknowledging the labor and delivery process that had ended in a stillbirth. It was felt the certificate would assist in easing their pain and help in their healing process. A stillbirth is defined in the legislation as the unintended intrauterine death of a fetus that occurs after the clinical estimate of the twentieth week of gestation.

The bill required the Health Department to

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issue a certificate of stillbirth when requested by specific members of the family. The bill also specified the certificate would not be a proof of live birth. As stated in the bill's justification, nothing in the bill was intended to subject physicians, healthcare providers, or hospitals to any undue burden. Hospitals were directed to designate the appropriate person on hospital staff to inform parents of the availability of the certificate and the process for requesting the certificate.

A certificate of stillbirth may be requested and issued regardless of the date of when the fetal death certificate was issued. To date, applications for the certificate have been received regarding stillbirths that go back to the late 1930s. As a certificate of stillbirth can only be issued if a fetal death certificate is on file and is based on information supplied on the fetal death certificate, staff have had numerous conversations with hospitals which have had in the past poor quality of reporting of the individuals fields on the fetal death certificates. I'm pleased to report that this situation seems to be rectified. The certificate created by department staff is based on the birth certificate format. It contains the names of

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the stillborn child, the child's sex, the date, time, and location of delivery. It also contains the names of the parents, their respective addresses, and a date and location of their births. The certificate of stillbirth is created on safety paper, and each one receives a wet signature from the director of vital records.

In the eleven business days since the law went to effect, we have had over sixty requests for certificates of stillbirth and are currently having -- all of those are under review and being processed. Two certificates have been issued, and those were the two that we utilized during the beta test of our process. Due to the short timeframe, the process of successfully creating the certificate would not have happened without a lot of hard work by department staff. I'd like to especially acknowledge the implementation team of Lenny Kluse (phonetic spelling), Bill Kohlerschmidt, and Jim Meany. In addition, this would not have been possible without the help of our department's legal staff, especially Ms. Diana Yang, and help in the dissemination of information to the hospital industry, done with the help of Ms. Ruth Leslie of the Bureau of Hospital and Primary Care Services.

In closing, I would like to add that, as you

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might well imagine, I have had numerous conversations with the advocates for this legislation during the process of creating the certificate of stillbirth, and they've asked me to express their willingness to be present at any future council meeting if you should have any questions or like an update on the progress. This ends my report. I'd be happy to take any questions.

DR. STRECK: Thank you for that report. Clearly a response to a particular community and with a lot of work behind it. Are there other comments about this? Yes, Dr. Boutin-Foster?

DR. BOUTIN-FOSTER: If the stillbirth occurs outside of a hospital, how would a parent go about finding out about this? Or does it only apply to hospital events?

MR. WARNER: If a stillbirth is -- occurs outside of a hospital, a fetal death certificate is still required to be filed. So we would have a fetal death certificate on file. The parents can still apply.

DR. STRECK: Other comments or questions? Thank you, Mr. Warner. We will now take a break for lunch. We have somewhat of a tight timetable in that there are travel arrangements that will constrain some

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of our members, so we'll -- we'll resume at one twenty. You may hurriedly gather sustenance and then return.

Thank you.

(Off the record)

*4. DR. STRECK: I'd like now to introduce Dr. Palmer to give a report on the Codes, Regulations and Legislation Committee. Dr. Palmer?

DR. PALMER: Thank you very much. Good after lunch afternoon. Just as an aside, I know we had tables with people who had concern about B.M.I. and those who were not concerned at all about their B.M.I. We segregated ourselves today.

The Codes and Regulations Committee reviewed four regulations on March 22nd, one for adoption and three for discussion. The first regulation on -- for adoption, concerned the Homecare Registry provisions. This proposal defines the rules for implementing Chapter 594 of the laws of 2008, the New York Certified Aide Registry and Employment Search Act. The statute requires -- the Department to establish a home care services work worker registry. This registry tracks training and employment information for an individual who a) successfully completed an approved home health and/or personal care aide training program that began on

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or after September 25th, 2009, or b) was employed as an aide by an Article 36 home care agency on September 25th, 2009, or c) completed an approved training program prior to September 25th, 2009, or was not employed by a home care agency on that date, but was subsequently employed by a home care agency to provide home care services.

The regulations outline the responsibilities of the state-approved training entities, home care services agencies, and home care trainees and aides. The -- the only comment received during the public comment period was from the New York State Association of Healthcare Providers requesting that timeframes for completing various data entry and aide certification requirements be increased from ten to fifteen business days. The Department declined to make that change. The initial timeframe in the proposal was three business days. The Association asked for more time, and it was increased to five business days. The Medicaid redesign team then asked to extend the timeframes. The Department obliged and they were doubled to ten business days.

The Department thinks ten business days or fourteen calendar days is an adequate amount of time for agencies to meet data entry and certification requirements.

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Additional extensions would delay still further entry into workforce of aides who successfully completed all training requirements. There was no quorum at the March 22nd meeting, so the Codes Committee could not make a formal recommendation to the Council. After a motion and a second, the Committee members present unanimously voted to recommend adoption of -- to the full Council, and I so moved.

DR. BERLINER: Second.

DR. STRECK: Been moved and seconded by Dr. Strange that the regulation --.

DR. PALMER: Dr. Berliner.

DR. STRECK: Oh, it's Dr. Berliner? I'm sorry. I beg your pardon. Seconded that motion to adopt the regulation as proposed. Is there a discussion on the regulation? Hearing none, I would ask for a vote. Those in favor of the regulation as proposed and seconded, please say aye. Opposed? Thank you. The regulation is approved.

DR. PALMER: The next item on the agenda was a discussion of the chronic renal dialysis provisions. This regulation updates Part 757 of Title 10 to conform to changes in the federal chronic renal dialysis provisions. It incorporates, by reference, federal

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Item three on the agenda for discussion clarifies -- seeks to clarify that before releasing a dead body from a general hospital, a determination regarding organ/tissue donation, status, and arrangements for recovery must be made. It specifies that a diseased -- deceased person shall be released -- released to a licensed funeral director only after all donor and recovery responsibilities have been met by the hospital and the existing networks for recovery of organs and tissues.

This measure also adds the definitions of reasonable -- reasonably available and domestic partner to conform to the recent Public Health Law changes regarding the process for requesting consent for a -- to an anatomical gift and a list of who can provide such consent.

For the last discussion regulation, a presentation was provided regarding organ transplant

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provisions. This proposal amends the anesthesia services provisions as they relate to living organ transplantation services, repeals the organ transplantations, the transplant center, and live liver transplantation services within the critical care of special services provisions of Section 405.22 and creates two new sections in Part 405 of Title 10 regarding transplant services.

Newly-created Sections 405.30 contains the organ and vascularized composite allograft transplant services/programs provisions. Newly-created Section 405.31 contains the living donor transplantation services requirements.

That, Mr. Chair, is my report, and I want to thank Ms. Haff for writing it.

DR. STRECK: Well read, indeed. So questions or comments? Mr. Fassler?

MR. FASSLER: Just a question because Jeff had raised a question at the last meeting about whether we got some input from religious groups about delay, and the Department should seek -- you know, the question whether to delay -- to delay a burial or not. You had raised that question. Did the Department have any feedback on that? Remember, Jeffrey raised the question

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about -- yeah.

MR. KRAUT: I think the issue here is, you know, certain religions, particularly in Judaism and Orthodox Judaism in particular, about wanting the body to be buried as quickly as possible. And does this provision create a delay that -- that other groups may oppose if we enact it?

DR. STRECK: I would just -- I have a question related to that, if I may. And that is the -- how much of a burden is this putting on the procedural aspects of -- of say a hospital function in terms of meeting these criteria? Is there a significant change in that regard over existing policy?

DR. PALMER: The standard of care is that you, as quickly as possible, try to make arrangements to talk to people about these issues, so --

DR. STRECK: Okay.

DR. PALMER: -- it wouldn't change. In fact, it would probably improve compliance considerably.

DR. STRECK: Thank you.

MR. KRAUT: And there would be a public comment -- is -- is -- there's going to be a public comment period, anyway, so I guess we -- we'd hear from that -- those communities at that time.

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DR. STRECK: Okay. Dr. Bhat?

DR. BHAT: Okay. Having spent most of my adult life in dialysis arena, I really want to make a comment saying that this is the right thing to do to adopt whatever the conditions of coverage that are put out by Medicare and what the State Health Department is doing. The conditions went into -- were a part of MIPPA, that's Medicare Improvements for Providers and Patients Act of 2008. It brought out the entire dialysis into the twenty-first century.

When I started out in dialysis, we did not have water treatment, and I think the way we did that would be to have a tank in which you would use a garden hose and put the water to a hundred twenty liters, had a wooden ladle to mix it, and that's how we did the dialysis. In 2008, they came out -- came out with all specific criteria by which we have to do the lab testing, and it made dialysis very safe.

The last time federal government had tried to do that would be in 1979. That was like ages ago. And this brings dialysis into the world of safety. And this is the right thing to do, and I commend Department of Health adopting the Medicare guidelines on this one. Thank you.

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DR. STRECK: Thank you. Any other comments or questions regarding the Codes and Regulations Committee? Thank you, Dr. Palmer.

We will now move to the Establishment Committee and -- and Project Review Committee Reports. And I'll turn this part of the meeting over to the chair, Mr. Kraut.

MR. KRAUT: I'd like to call the first applications. It'll be Category Two applications that are recommended for approval where we have no recusals or no dissent. 121076-C, Institute for Urban Family Health/Sidney Hillman Center in New York County. We have an interest declared by Mr. Fassler, whose employer has a contractual agreement with the applicant, and an interest declared by Dr. Rugge, who shares a board relationship with the C.E.O. of the applicant. And Dr. Rugge has indicated he will not participate in the voting.

The application is to relocate the Family Health Center extension clinic from 1879 Madison Avenue, New York, to 1824 Madison Avenue, amend and supersede C.O.N. Number 111539-C. O.H.S.M. recommended approval with conditions and contingencies, and that was similarly recommended by the Establishment Committee,

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and I so move.
UNIDENTIFIED SPEAKER: Second.
DR. STRECK: A motion and a second. Is there a discussion? Hearing none, those in favor, say aye. Opposed? Thank you.
MR. KRAUT: Application 121079-C, Boro Park -- Boro Park Operating Company, L.L.C., doing business as Boro Park Center for Rehabilitation and Healthcare. We have recusals by Mr. Fassler and Mr. Fensterman, who are leaving the room. They have left the room. They have -- this proposal is to acquire a hundred and fifty-six R.H.C.F. beds from Cabrini Center for Nursing and Rehabilitation to increase capacity from three hundred and fifty-four to five hundred and ten with renovations. O.H.S.M. recommended approval with contingencies, as did the Committee, and I so move.
UNIDENTIFIED SPEAKER: Second.
DR. STRECK: Moved and seconded. Is there discussion? Hearing none, those in favor, aye? Opposed? Thank you.
MR. KRAUT: Could you have Mr. Fassler and Mr. Fensterman return? Call application 102376-C, Albany County Nursing Home, to construct a two hundred bed replacement facility and certify a thirty-slot adult day

4-5-2012 - Albany, New York - Planning Council healthcare program. The two hundred bed facility will consist of a hundred and eighty R.H.C.F. beds and twenty ventilator-dependent beds. This project was presented to the Special Establishment Project and Review Committee that was held prior to today's meeting. O.H.S.M. recommended approval with conditions and contingencies. The Committee failed to accept that recommendation, and an alternate recommendation was made to defer the project, which was unanimously passed by the Committee. And I so move that the Council accept that recommendation to defer this project.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: So a motion has been made and seconded to defer this project. Is there further discussion? Hearing none, those in favor of the motion, aye? Opposed? Thank you.

MR. KRAUT: An application 112222-B, Brooklyn S.C., L.L.C., in Kings County, to establish and construct a multi-specialty freestanding ambulatory surgery center at 6002 Bay Parkway in Brooklyn. O.H.S.M. recommended a five-year limited life with conditions and contingencies. The Establishment Committee similarly recommended with no discussion, and I so move.

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UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Is there further discussion? Hearing none, those in favor, aye? Opposed?

MR. KRAUT: I can group all of these?

DR. STRECK: I think we can batch these, Mr. --.

MR. KRAUT: Okay. Yeah, I'm -- I'm going to now batch -- I'm sorry. I -- I'm not used to this. We're going to take the entire batch of these Category One -- this is going to be 112287-B, Plastic Surgery Center of Westchester, to add ophthalmology to an existing special surgery specialty freestanding am-surg center and transfer forty-three percent of the membership interest to six new members.

Application 112347-E, Executive Woods AmSurg Center, L.L.C., in Albany County to transfer three point three three three percent ownership interest to a new member from a retiring member bringing the five-year aggregate percentage change to more than twenty-five percent.

Application 112261-E, E & A Medical Solutions, L.L.C., doing business as Forest Hills Health Center, Queens County, to transfer ownership of an existing

4-5-2012 - Albany, New York - Planning Council Article 28 facility or health diagnostic and treatment center to E & A Medical Solutions, doing business as Forest Hills Health Center.

Application 112136-E, Hopkins Ventures, L.L.C., doing business as Hopkins Center for Rehabilitation and Healthcare, transfer thirty-nine percent of its membership interest to six new members of the limited liability company.

A certificate of incorporation for Oswego Health Foundation is being organized for the purpose of soliciting and managing funds for Oswego Hospital. Approval of the certificate of amendment to the certificate of incorporation for United Cerebral Palsy and Handicapped Children's Association of Chemung County, which is seeking approval to change its corporate name to Able, numeric two, Enhancing Potential, Inc.

A certificate of dissolution for Lutheran Center for the Aging, Inc. The corporation's certificate of incorporation was filed in May 13th, 1980. It was approved to establish and operate a three hundred fifty-three bed R.H.C.F. in Smithtown. The corporation transferred ownership and operation of the facility through an asset transfer to Avalon Gardens

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I also have the following home health agency licensures I'm going to move. 2106-L, St. Lawrence County Public Health Department.

2068-L, Hudson Valley Health -- Home Healthcare, L.L.C.

2075-L, Golden Acres Home for Adults S.P., L.L.C.

2034-L, Robynwood L.L.C., doing business as Robynwood Homecare.

And I move these applications. The O.H.S.M. recommended approval in some instances with contingencies or conditions as -- as stated in the book, and I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and second -- moved and seconded. Is there any further discussion? Hearing none, those in favor of the applications in this batch, please signify by saying aye. Opposed? Thank you.

MR. KRAUT: Okay. Now I'm going to move Category Two applications where we have recusals but no dissent by either the Health Systems Agency or Establishment and Project Review.

(Off-the-record discussion)

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MR. KRAUT: So we have 121051-E, Corning Hospital, interest declared by Mr. Booth, to merge Guthrie Healthcare System and Guthrie Clinic, Limited, into Guthrie Health, which will assume all G.H.S. and G.C. assets, liabilities, and employees. This is a companion application to 112343-B.

Application 112184-B, Huther Doyle Memorial Institute, interest declared by Mr. Booth, to establish and construct a diagnostic and treatment center to provide primary care and specialty services including gynecology at 360 East Avenue in Rochester. This is going to be approval for a five-year limited life. 112343-B, Corning Centerway, Steuben County. Convert fourteen practice clinic sites operated in New York State by the Guthrie Clinic into the ten diagnostic and treatment centers, which was the companion application to the one I had previously mentioned.

Application 102454-E, Compassionate Care Hospice of New York, interest declared by Ms. Regan, transfer ninety percent of the company's membership interest from Judith Grey to Bella Heching. The project was presented before the Committee on July 21st, which resulted in a recommendation for approval. It was then presented to the Public Health and Health Council on

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August 4th, and the Council voted to defer the project. It now returns to us with a recommendation for approval. 112211-B, Jacob Perlow Hospice Corporation, doing business as M.J.H.S. Hospice and Palliative Care in Kings County. Interests have been declared by both Mr. Fassler and Ms. Regan. The Jacob Perlow Hospice Corporation, doing business as M.J.H.S. Hospice and Palliative Care, is to acquire the Article 40 hospice license of Metropolitan Jewish Homecare, Inc., doing business as M.J.H.S. Hospice and Palliative Care of Greater New York.

And I'm going to stop here. And I move these applications in some instances with approval with contingencies and conditions as noted in the book. I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Discussion on any of these applications? Hearing none, those in favor, aye? Opposed? Thank you.

MR. KRAUT: Now I'm going to move applications individually where we have recusals. The first is 111413-E, Genesee Region Homecare Association, Inc., doing business as Lifetime Care in Schuyler County. A recusal by Mr. Booth and Ms. Hines, who are leaving the

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room and have left the room. This is -- application is to transfer a hundred percent ownership of Schuyler County Home Health Agency to Genesee Region Homecare Association, Inc., doing business as Lifetime Care. O.H.S.M. recommended approval with contingencies, as did the Establishment Committee, and I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Discussion? Hearing none, those in favor, aye? Opposed?

MR. KRAUT: Okay.

DR. STRECK: Thank you.

MR. KRAUT: You can ask Ms. Hines to return to the room, but keep Mr. Booth out of the room. Oh, no. He -- he can come back in. He's an interest. I'm sorry. They're both allowed back in.

(Off-the-record discussion)

MR. KRAUT: Mr. Booth and Ms. Hines have returned to the room.

Application 112275-E, Rockville Operating, L.L.C., doing business as Advanced Center for Rehabilitation and Nursing at Rockville Center. This is to establish Rockville Operating L.L.C. Advanced Center for Rehabilitation and Nursing as the new operator of Rockville Nursing Center. Mr. Fensterman has indicated

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a recusal, and he is out of the room. I'm also going to group this with another application where Mr. Fensterman has recused himself.

112348-E, St. James Operating, L.L.C., doing business as St. James Rehabilitation and Healthcare Center in Suffolk County. This is to establish the St. James Operating, L.L.C., as the new operator of St. James Healthcare Center. O.H.S.M. has recommended approval with contingencies as -- and the Establishment Committee recommended also approval, and I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Discussion? Hearing none, aye? Opposed? Thank you.

MR. KRAUT: Ask Mr. Fensterman to return. He's already in the room.

Application 111456-E, 4800 Bear Road Operating Company, L.L.C., doing business as Elderwood at Liverpool in Onondaga County, to establish the 4800 Bear Road Operating Company, L.L.C., doing business as Elderwood at Liverpool as the new operator of the Elderwood Healthcare at Birchwood, located at 4800 Bear Road in Liverpool. Approval -- O.H.S.M. recommended approval with contingencies. The Establishment Committee recommended approval with contingencies with

4-5-2012 - Albany, New York - Planning Council one member abstaining. There were no discussion, and I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Is there further discussion? Those in favor, aye? Opposed? Thank you.

MR. KRAUT: I'm now going to group the following applications.

111462-E, 1818 Como Park Boulevard Operating Company, doing business as Elderwood at Lancaster. These applications will essentially all -- I'm going to group them all without reading everything that are -- that is in the book because it's essentially a change of ownership here. An interest is declared by Mr. Booth.

111463-E, 20 Bassett Road Operating Company, L.L.C., doing business as Elderwood at Williamsville in Erie County. Interest declared by Mr. Booth.

111466-E, 2600 Niagara Falls Boulevard Operating Company, L.L.C., doing business as Elderwood at Wheatfield of Niagara County. Interest declared by Mr. Booth.

111467-E, 4459 Bailey Avenue Operating Company, L.L.C., doing business as Elderwood at Amherst. Interest declared by Mr. Booth.

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111468-E, 2850 Grand Island Boulevard Operating Company, L.L.C., doing business as Elderwood at Grand Island in Erie County. Interest declared by Mr. Booth.

111469-E, 225 Bennett Road Operating Company, L.L.C., doing business as Elderwood at Cheektowaga in Erie County. Interest declared by Mr. Booth.

111470-E, 5775 Maelou Drive Operating Company, L.L.C., doing business as Elderwood at Hamburg in Erie County. Interest declared by Mr. Booth.

111471-E, 37 North Chemung Operating Company, L.L.C., doing business as Elderwood at Waverly. Interest declared by Mr. Booth.

And I'm going to stop here. All of these have been recommended for approval with contingencies by both O.H.S.M. and the Establishment Committee, and I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Discussion? Hearing none, those in favor, aye? Opposed? Thank you.

MR. KRAUT: All right. Now I'm going to call application 112218-E, Waterfront Operations Associates, L.L.C., doing business as the Waterfront Center for Rehabilitation and Healthcare in Erie County. Mr. Fassler has declared a recusal, and he has left the room. An interest has been declared by Mr. Booth. This

4-5-2012 - Albany, New York - Planning Council is to establish Waterfront Operations Associates, L.L.C., doing business as Waterfront Center for Rehabilitation and Healthcare as the operator of Waterfront Healthcare Center. O.H.S.M. recommended approval with contingencies. This -- as did the Establishment Committee, and I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Discussion? Those in favor, aye? Opposed? Thank you.

MR. KRAUT: I'm now going to batch the follow Home Health Agency licensures. Other than -- well, I'll -- I'll -- I'll go do --.

1691-L, ABC Homecare, interest declared by Ms. Regan.

1882-L, BaCOR -- BaCOR Health Solutions Group, doing business as BaCOR Care for Life, interest declared by Ms. Regan.

1716-L, Elite Homecare Services, Inc., interest declared by Ms. Regan.

1634-L, Healing Touch Homecare, Inc. Interest declared by Ms. Regan.

1901-L, Heritage Christian Services, Inc., interest declared by Mr. Booth.

(Off-the-record discussion)

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MR. KRAUT: And the previous application, 1901-L, interest has also been declared by Ms. Hines. 1906-L, J.S. Homecare Agency of New York., interest declared by Ms. Regan.

1962-L, Louis Career Development, Inc., doing business as the Smart Homecare Agency, interest declared by Ms. Regan.

1996-L, Steps in Homecare, Inc., interest declared by Ms. Regan.

2107-L, Niagara County Department of Health, interest declared by Mr. Booth.

2108-L, Tompkins County Health Department, interest declared by Mr. Booth.

2096-L, Yates County Public Health, interest declared by Mr. Booth.

2010-L, Samaritan Senior Village, Inc., interest declared by Mr. Booth.

2028-L, 229 Bennett -- Bennett Road Operating Company, L.L.C., doing business as Elderwood Homecare at Cheektowaga.

2029-L, 580 Orchard Park Road Operating Company, L.L.C., doing business as Elderwood Homecare at West Seneca.

2030-L, 76 Buffalo Street Operating Company,

4-5-2012 - Albany, New York - Planning Council doing business with -- at Elderwood Homecare at Hamburg in Erie County, interest declared by Mr. Booth.

2031-L, 44 Ball Street Operating Company, L.L.C., doing business as Elderwood Homecare at Waverly, interest declared by Mr. Booth.

And I so move approval of these applications.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: The applications have been moved and seconded. Discussion? Those in favor, aye? Opposed? Thank you.

MR. KRAUT: I'll now call application 112382-B, North Country Eye Center in Saratoga County. Dr. Rugge had declared an interest and abstained from voting. He's anticipating a service contract agreement with the applicant. It's to establish and construct a single specialty ophthalmology ambulatory surgery center to be located at North Road in Wilton. There's -- O.H.S.M. recommended approval for a five-year limited life with conditions and contingencies that were recommended. The Establishment Committee did similarly with -- and with one member opposing. And we recommend approval, and I so move.

UNIDENTIFIED SPEAKER: Second.

DR. STRECK: Moved and seconded. Is -- is

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there discussion? Hearing none, those in favor, aye? Opposed? Thank you.

MR. KRAUT: Okay.

MR. BOOTH: The next application is 112086-B, 1504 Richmond, L.L.C., d/b/a Richmond Surgery Center. A conflict has been declared by Mr. Kraut, who has left the room. The Department has deferred this application at the applicant's request so that a change in the applicant entity can be made.

DR. STRECK: So that's just a Departmental referral. We need no action on that. Okay. Thank you. Mr. Kraut -- or Dr. Berliner?

DR. BERLINER: So what does that actually mean? I mean, not the -- not the -- you know, the -- the -- the delay. But what is the change in the applicant --?

MR. ABEL: The -- the representatives for the applicant contacted us and heard the -- the concerns expressed at the Establishment and Project Review Committee and believes that a restructuring of the applicant entity to include a medical professional in the -- in the ownership entity may alleviate some of the concerns of the Committee. And they are in the process of revising their applications and submitting the necessary supportive documentation. We hope to be able

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to bring this forward, assuming we can complete our review in satisfactory form, next cycle.

DR. STRECK: Other questions or comments? Mr. Kraut, you may return to close your meeting -- close your Committee.

MR. KRAUT: And that concludes the report of the Establishment and Project Review Committee.

DR. STRECK: And with the conclusion of the Establishment and Project Review Committee, we have completed the agenda for the Public Health and Health Planning Council today, save for an Executive session to follow. Are there comments, questions in the open session of the Council before we adjourn this part of the meeting? Hearing none, I would entertain a motion to adjourn.

UNIDENTIFIED SPEAKER: So moved.

DR. STRECK: Moved and seconded, I'm sure. Thank you. We are adjourned. So I would ask our guests to leave, and we will reconvene in the executive session of the Council momentarily.

(Off the record)

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STATE OF NEW YORK
I, G. Michael France, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription, consisting of pages 1 through 90, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 10th day of April, 2012.

_____
G. Michael France, Reporter

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

June 7, 2012

REGULATION

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

Angel Gutiérrrez, M.D., Chair

For Emergency Adoption

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

For Discussion

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

10-15 Amendment of Section 400.18 of Title 10 NYCRR (Statewide Planning and Research Cooperative System (SPARCS))

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 86-2.41 to be effective upon filing with the Secretary of State, to read as follows:

86-2.41 Sprinkler systems

(a) Subject to the availability of federal financial participation, the capital cost components of the rates of eligible residential health care facilities for periods on and after the effective date of this regulation shall be adjusted in accordance with the following:

(1) For the purposes of this subdivision, eligible facilities are those facilities which the commissioner determines are financially distressed in terms of their being unable to finance, at terms acceptable to the commissioner, the installation of automatic sprinkler systems, in conformity with the provisions of federal regulations set forth in 42 CFR 483.70(a)(8). In making such determinations of eligibility the commissioner shall consider information obtained from a facility's cost report, other more recent financial information to be provided by the facility, and such other information as may be required by the commissioner, including, but not limited to:

(i) operating profits and losses;

(ii) eligibility for funding pursuant to subdivision twenty-one of section 2808 of the Public Health Law;

(iii) unrestricted fund balances;

(iv) documentation demonstrating the inability of the facility to obtain credit, at terms acceptable to the commissioner, without the reimbursement treatment accorded pursuant to this section;

(v) working capital;

(vi) days of cash expense on hand;

(vii) days of revenue in accounts receivable;

(viii) transfers and withdrawals;

(ix) information related to the health and safety of a facility's residents;

(x) other financial information as may be required from the facility by the commissioner; and

(xi) the filing of a Notice pursuant to Subdivision 1-a of Section 2802 of the Public Health Law, or the receipt of required CON approvals, as appropriate.

(2) The capital cost component of the Medicaid rates of each eligible facility shall be adjusted in an amount, as determined by the commissioner, to reflect the costs of the annual debt service related to the financing of equipment and other capital improvements directly related to the financing of an automatic sprinkler system that will be in compliance with applicable federal regulations.

(3) As a condition for receipt of funding pursuant to this section, each such facility shall submit to the commissioner the costs of the project, the proposed terms of the financing, including interest rate and term of the financing, and other such information as may be required by the Commissioner. Prior to the due date of the first debt service payment related to such financing, each eligible facility shall prepare a schedule setting forth by month the estimated debt service payable over the life of the financing. Such schedule, project and

financing terms, along with such other information as may be required by the commissioner, shall be provided to the commissioner for review and approval at least sixty days prior to the due date of such first debt service payment, or such shorter period as the commissioner may permit.

(4) As a condition for receipt of funding pursuant to this section, Medicaid revenues attributable to the rate adjustments authorized by this subdivision and any other additional facility revenues needed to cover scheduled debt service payments relating to the financing of an automatic sprinkler system that is in compliance with federal regulation as described in this section, shall be deposited into a separate account maintained by the facility and the deposits in such account shall be used solely for the purpose of satisfying such debt service payments.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for this regulation is contained in the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Legislative Objectives:

Federal regulations require that on or before August 13, 2013, all nursing homes be protected throughout by a supervised automatic sprinkler system. Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 2.41 to assist eligible nursing homes (i.e., those which are determined to be financially distressed) with accessing the credit markets to finance the costs of equipment and other capital costs directly related to the installation of an automatic sprinkler system that is compliant with the Federal regulations. To provide an immediate source of revenue to financially distressed nursing homes to pay the debt service on loans to finance sprinkler systems, the Medicaid capital rate will be adjusted to accelerate the reimbursement of such costs (e.g., reimbursement will begin in 2012 rather than 2014 – the normal 2 year lag under which capital reimbursement normally occurs). In addition, to provide assurance to prospective lenders that such funds will be available to pay debt service, the proposed regulation also requires eligible facilities to deposit in a separate account Medicaid revenues attributable to the capital rate adjustments for sprinklers, and other facility revenues as may be required to cover 100% of debt service payments due. The funds held in such separate account may only be used

for the purpose of paying the debt service on the outstanding sprinkler loans. The Department of Health estimates there are approximately 98 nursing homes that are financially distressed and that do not meet the Federal mandate for sprinklers.

Needs and Benefits:

Federal regulations require that all nursing homes be protected by an automatic sprinkler system. There are roughly 98 nursing homes that are not compliant with the Federal mandate and that are estimated to be financially distressed (as described by the criteria established in the regulation). This regulation will ensure that the health and safety of nursing homes residents is protected and access to care is maintained by ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, the termination of Medicaid and Medicare provider certifications).

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations. The acceleration of the reimbursement of Medicaid capital costs anticipated by this provision will be accommodated in the nursing home appeals cap and in the processing of annual capital rates. Depending on the terms of the financing, it is likely the acceleration of capital costs will reduce over the life debt service costs and result in long term savings for the State.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

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

Paperwork:

The regulation will require nursing homes to apply to the Department to determine if they meet the financially challenged criteria established by the regulation and to submit a schedule of debt service payments. This additional paperwork is expected to be minimal, as the Department will primarily use information already required to be submitted by nursing homes (i.e., annual cost report data) to determine eligibility and to reimburse capital costs.

Duplication:

These regulations do not duplicate existing state or federal regulations. These regulations will assist financially distressed nursing homes with meeting the requirements of an existing federal regulation for sprinkler systems.

Alternatives:

The regulation is prompted by the requirement that nursing homes comply with the Federal mandate for sprinklers and the lack of alternative financing vehicles for financially distressed homes that cannot, in the absence of this regulation, independently access the credit

markets. Absent this regulation, nursing homes that are unable to comply with the Federal mandate are at risk for losing their provider certifications.

Federal Standards:

The regulation will assist nursing homes with meeting an existing Federal mandate which requires nursing homes to be equipped with an automatic sprinkler system.

Compliance Schedule:

This proposed regulation will help nursing homes meet the August 13, 2013 deadline for becoming compliant with Federal regulations that require homes to be equipped with an automatic sprinkler system.

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REGULATORY FLEXIBILITY ANALYSIS
FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 60 residential health care facilities (i.e., nursing homes) were identified as employing fewer than 100 employees. It is estimated that 7 of these small business nursing homes are not currently compliant with Federal regulations requiring automatic sprinklers and will meet the financially distressed criteria established by this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Professional Services:

No new or additional professional services are required by small business nursing homes to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

Compliance Costs:

There are no new compliance costs. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

Minimizing Adverse Impact:

This regulation will assist homes, some of which will be small businesses as described above, with meeting the requirements of Federal regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes which are small businesses), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

Small Business and Local Government Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of small business nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

RURAL AREA FLEXIBILITY ANALYSIS

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

There are no new compliance requirements. The regulation will assist approximately 98 financially distressed nursing homes that are located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Professional Services:

No new or additional professional services are required by nursing homes located in rural areas to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

Compliance Costs:

No additional compliance costs are anticipated as a result of this regulation. The regulation will assist financially distressed nursing homes located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Minimizing Adverse Impact:

This regulation will assist nursing homes located across the State, with meeting the requirements of Federal regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes located in many of the counties listed above), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

Rural Area Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of rural nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to accelerate capital reimbursement for costs related to the installation of automatic sprinkler systems will have a material impact on jobs or employment opportunities across the Nursing Home industry.

EMERGENCY JUSTIFICATION

It is necessary to issue the proposed regulations on an emergency basis in order to ensure financially challenged nursing homes can secure the loans required to finance and perform the necessary work required to purchase and install a Federally compliant sprinkler system on or before August 13, 2013. Providing nursing homes as much time as possible to meet the Federal requirements will protect the health and safety of nursing homes residents by maintaining access to care and ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications).

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 86-2.41 to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

86-2.41 Sprinkler systems

(a) Subject to the availability of federal financial participation, the capital cost components of the rates of eligible residential health care facilities for periods on and after the effective date of this regulation shall be adjusted in accordance with the following:

(1) For the purposes of this subdivision, eligible facilities are those facilities which the commissioner determines are financially distressed in terms of their being unable to finance, at terms acceptable to the commissioner, the installation of automatic sprinkler systems, in conformity with the provisions of federal regulations set forth in 42 CFR 483.70(a)(8). In making such determinations of eligibility the commissioner shall consider information obtained from a facility's cost report, other more recent financial information to be provided by the facility, and such other information as may be required by the commissioner, including, but not limited to:

(i) operating profits and losses;

(ii) eligibility for funding pursuant to subdivision twenty-one of section 2808 of the Public Health Law;

(iii) unrestricted fund balances;

(iv) documentation demonstrating the inability of the facility to obtain credit, at terms acceptable to the commissioner, without the reimbursement treatment accorded pursuant to this section;

(v) working capital;

(vi) days of cash expense on hand;

(vii) days of revenue in accounts receivable;

(viii) transfers and withdrawals;

(ix) information related to the health and safety of a facility's residents;

(x) other financial information as may be required from the facility by the commissioner; and

(xi) the filing of a Notice pursuant to Subdivision 1-a of Section 2802 of the Public Health Law, or the receipt of required CON approvals, as appropriate.

(2) The capital cost component of the Medicaid rates of each eligible facility shall be adjusted in an amount, as determined by the commissioner, to reflect the costs of the annual debt service related to the financing of equipment and other capital improvements directly related to the financing of an automatic sprinkler system that will be in compliance with applicable federal regulations.

(3) As a condition for receipt of funding pursuant to this section, each such facility shall submit to the commissioner the costs of the project, the proposed terms of the financing, including interest rate and term of the financing, and other such information as may be required by the Commissioner. Prior to the due date of the first debt service payment related to such financing, each eligible facility shall prepare a schedule setting forth by month the estimated debt service payable over the life of the financing. Such schedule, project and

financing terms, along with such other information as may be required by the commissioner, shall be provided to the commissioner for review and approval at least sixty days prior to the due date of such first debt service payment, or such shorter period as the commissioner may permit.

(4) As a condition for receipt of funding pursuant to this section, Medicaid revenues attributable to the rate adjustments authorized by this subdivision and any other additional facility revenues needed to cover scheduled debt service payments relating to the financing of an automatic sprinkler system that is in compliance with federal regulation as described in this section, shall be deposited into a separate account maintained by the facility and the deposits in such account shall be used solely for the purpose of satisfying such debt service payments.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for this regulation is contained in the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Legislative Objectives:

Federal regulations require that on or before August 13, 2013, all nursing homes be protected throughout by a supervised automatic sprinkler system. Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 2.41 to assist eligible nursing homes (i.e., those which are determined to be financially distressed) with accessing the credit markets to finance the costs of equipment and other capital costs directly related to the installation of an automatic sprinkler system that is compliant with the Federal regulations. To provide an immediate source of revenue to financially distressed nursing homes to pay the debt service on loans to finance sprinkler systems, the Medicaid capital rate will be adjusted to accelerate the reimbursement of such costs (e.g., reimbursement will begin in 2012 rather than 2014 – the normal 2 year lag under which capital reimbursement normally occurs). In addition, to provide assurance to prospective lenders that such funds will be available to pay debt service, the proposed regulation also requires eligible facilities to deposit in a separate account Medicaid revenues attributable to the capital rate adjustments for sprinklers, and other facility revenues as may be required to cover 100% of debt service payments due. The funds held in such separate account may only be used

for the purpose of paying the debt service on the outstanding sprinkler loans. The Department of Health estimates there are approximately 98 nursing homes that are financially distressed and that do not meet the Federal mandate for sprinklers.

Needs and Benefits:

Federal regulations require that all nursing homes be protected by an automatic sprinkler system. There are roughly 98 nursing homes that are not compliant with the Federal mandate and that are estimated to be financially distressed (as described by the criteria established in the regulation). This regulation will ensure that the health and safety of nursing homes residents is protected and access to care is maintained by ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, the termination of Medicaid and Medicare provider certifications).

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations. The acceleration of the reimbursement of Medicaid capital costs anticipated by this provision will be accommodated in the nursing home appeals cap and in the processing of annual capital rates. Depending on the terms of the financing, it is likely the acceleration of capital costs will reduce over the life debt service costs and result in long term savings for the State.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

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

Paperwork:

The regulation will require nursing homes to apply to the Department to determine if they meet the financially challenged criteria established by the regulation and to submit a schedule of debt service payments. This additional paperwork is expected to be minimal, as the Department will primarily use information already required to be submitted by nursing homes (i.e., annual cost report data) to determine eligibility and to reimburse capital costs.

Duplication:

These regulations do not duplicate existing state or federal regulations. These regulations will assist financially distressed nursing homes with meeting the requirements of an existing federal regulation for sprinkler systems.

Alternatives:

The regulation is prompted by the requirement that nursing homes comply with the Federal mandate for sprinklers and the lack of alternative financing vehicles for financially distressed homes that cannot, in the absence of this regulation, independently access the credit

markets. Absent this regulation, nursing homes that are unable to comply with the Federal mandate are at risk for losing their provider certifications.

Federal Standards:

The regulation will assist nursing homes with meeting an existing Federal mandate which requires nursing homes to be equipped with an automatic sprinkler system.

Compliance Schedule:

This proposed regulation will help nursing homes meet the August 13, 2013 deadline for becoming compliant with Federal regulations that require homes to be equipped with an automatic sprinkler system.

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REGULATORY FLEXIBILITY ANALYSIS
FOR
SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 60 residential health care facilities (i.e., nursing homes) were identified as employing fewer than 100 employees. It is estimated that 7 of these small business nursing homes are not currently compliant with Federal regulations requiring automatic sprinklers and will meet the financially distressed criteria established by this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Professional Services:

No new or additional professional services are required by small business nursing homes to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

Compliance Costs:

There are no new compliance costs. The regulation will assist financially distressed nursing homes, 7 of which are estimated to be small businesses, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

Minimizing Adverse Impact:

This regulation will assist homes, some of which will be small businesses as described above, with meeting the requirements of Federal regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes which are small businesses), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

Small Business and Local Government Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of small business nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

RURAL AREA FLEXIBILITY ANALYSIS

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

There are no new compliance requirements. The regulation will assist approximately 98 financially distressed nursing homes that are located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Professional Services:

No new or additional professional services are required by nursing homes located in rural areas to apply to the Department to determine if they are eligible to receive accelerated Medicaid reimbursement of capital costs for sprinklers.

Compliance Costs:

No additional compliance costs are anticipated as a result of this regulation. The regulation will assist financially distressed nursing homes located across the State, including in many of the counties listed above, with meeting an existing Federal mandate which requires all nursing homes be protected throughout by an automatic sprinkler system.

Minimizing Adverse Impact:

This regulation will assist nursing homes located across the State, with meeting the requirements of Federal regulations that mandate all nursing homes be protected by an automatic sprinkler system. Assisting nursing homes (including nursing homes located in many of the counties listed above), with meeting this mandate will minimize the adverse implications of failing to comply, which include potentially jeopardizing the health and safety of nursing home residents, civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications.

Rural Area Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of rural nursing homes) worked collaboratively to develop the regulation. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

JOB IMPACT STATEMENT

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to accelerate capital reimbursement for costs related to the installation of automatic sprinkler systems will have a material impact on jobs or employment opportunities across the Nursing Home industry.

Summary of Express Terms

Section 400.18 is repealed and replaced by a new Section 400.18. There are three objectives for the revision of 10 NYCRR Section 400.18: deleting obsolete language; realigning the regulation to reflect current practices; and adding new provisions, including provisions for the mandated outpatient data collection. The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to Section 2816 requiring a new type of data to be collected.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to approval by the Commissioner of Health by Section 2816 of the Public Health Law, Section 400.18 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new Section 400.18 is added to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

A new title of Section 400.18 is added and a new Section 400.18 is added to read as follows:

10 NYCRR § 400.18 Statewide Planning and Research Cooperative System (SPARCS).

(a) Definitions. For the purposes of this section, these terms shall have the following meanings:

(1) Data Protection Review Board (DPRB) shall mean the board whose members, functions, and responsibilities are elaborated in subdivision (e) of this section.

(2) Executive Secretary of the DPRB shall mean a person in the SPARCS program designated by the Commissioner to act as administrator for all DPRB activities.

(3) Health care facilities shall mean facilities licensed under Article 28 of the Public Health Law.

(4) Identifying data elements shall mean those SPARCS and PRI data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy. A list of identifying data elements shall be specified by the Commissioner and will be made available publicly.

(5) Inpatient hospitalization data shall mean SPARCS data submitted by hospitals for patients receiving inpatient services at a general hospital that is licensed under Article 28

of the Public Health Law and that provides inpatient medical services.

(6) New York State agency shall mean any New York State department, board, bureau, division, commission, committee, public authority, public benefit corporation, council, office, or other governmental entity performing a governmental or proprietary function for the State of New York.

(7) Outpatient data shall mean emergency department data, ambulatory surgery data, and outpatient services data.

(i) Ambulatory surgery data shall mean SPARCS data submitted by a facility licensed to provide ambulatory surgery services under Article 28 of the Public Health Law.

(ii) Emergency department data shall mean SPARCS data submitted by a facility licensed to provide emergency department services under Article 28 of the Public Health Law.

(iii) Outpatient services data shall mean all data submitted by licensed Article 28 general hospitals and diagnostic and treatment centers, excluding inpatient hospitalization data, emergency department data, and ambulatory surgery data.

(8) Patient Review Instrument (PRI) data shall mean the data submitted on PRI forms by residential health care facilities, pursuant to section 86-2.30 of this Title.

(9) SPARCS data shall mean the data collected by the Commissioner of Health under section 2816 of the Public Health Law and this section, including inpatient hospitalization data and outpatient data.

(10) SPARCS program shall mean the program in the New York State Department of Health (NYSDOH) that collects and maintains SPARCS data and discloses SPARCS and Patient Review Instrument (PRI) data.

(b) Reporting SPARCS data.

(1) Health care facilities shall report data as follows:

(i) Health care facilities shall submit, or cause to have submitted, SPARCS data in an electronic, computer-readable format through NYSDOH's secure electronic network according to the requirements of section 400.10 of this Part and the specifications provided by the Commissioner.

(ii) All SPARCS data must be supported by documentation in the patient's medical and billing records.

(iii) Health care facilities must submit on a monthly basis to the SPARCS program, or cause to have submitted on a monthly basis to the SPARCS program, data for all inpatient discharges and outpatient visits. Health care facilities must submit, or cause to have submitted, at least 95 percent of data for all inpatient discharges and outpatient visits within sixty (60) days from the end of the month of a patient's discharge or visit. Health care facilities must submit, or cause to have submitted, 100 percent of data for all inpatient discharges and outpatient visits within one hundred eighty (180) days from the end of the month of a patient's discharge or visit.

(iv) The SPARCS program may conduct an audit evaluating the quality of submitted SPARCS data and issue an audit report to a health care facility listing any inadequacies or inconsistencies in the data. Any health care facility so audited must submit corrected data to the SPARCS program within 90 days.

(v) An annual notarized statement, attesting to the accuracy of the submitted SPARCS data, shall be required from the health care facility's Chief Executive Officer (CEO) or, if designated by the CEO, the Chief Information Officer or the Chief Financial Officer.

(2) Content of the SPARCS data.

(i) Health care facilities shall submit, or cause to have submitted, such uniform bill data elements as are required by the Commissioner. The data elements required by the Commissioner shall be based on those approved by the National Uniform Billing

Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions. The required data elements shall be published on the NYSDOH's website.

(ii) Health care facilities shall submit, or cause to have submitted, such additional data elements as are required by the Commissioner and that conform to the data uses specified in paragraph (1) of subdivision (d) of this section. Such additional data elements shall be from medical records or demographic information maintained by the health care facilities.

(iii) The list of specific SPARCS data elements and their definitions shall be maintained by the Commissioner, will be made available publicly, and may be modified by the Commissioner.

(c) Maintenance of SPARCS data.

The Commissioner shall be responsible for protecting the privacy and confidentiality of the health care information reported to the SPARCS program.

(d) Disclosure of SPARCS and PRI data.

(1) SPARCS and PRI data may be used for the following purposes:

(i) SPARCS and PRI data may be used for the purpose of health care studies investigating issues including, but not limited to, morbidity and mortality patterns, disease dynamics, disease prevalence and incidence, outbreak detection, variations in length of stay, efficiency assessments, quality of care and access to care, health economics, health planning and resource allocation, utilization, cost-effectiveness, rate-setting policies, and health care fraud and abuse.

(ii) The SPARCS program may establish policies and procedures for the legally authorized use of SPARCS and PRI data, including identifying data elements, by NYSDOH for research, public health, health oversight and agency operational purposes.

(2) In determining the purpose of a request for SPARCS and PRI data, the SPARCS program, the DPRB, and the Commissioner shall not be limited to information contained in the data request form and may request supplemental information from the applicant.

(3) The Commissioner shall charge a reasonable fee to all persons and organizations receiving SPARCS and PRI data based upon costs incurred and recurring for data processing, platform/data center and software. The Commissioner may discount the base fee or waive the fee upon request to the SPARCS program when, in his or her discretion, department functions will be advanced by disclosure of such information. The fee shall be waived in the following circumstances:

(i) Use by a health care facility of the data it submitted to the SPARCS program.

(ii) Use by a health care facility that is licensed under Article 28 of the Public Health Law for the purpose of rate determinations or rate appeals. Each facility shall be provided only the types of SPARCS data (inpatient hospitalization, emergency department, ambulatory surgery, or outpatient services) submitted to the SPARCS program.

(iii) Use by a New York State agency or a county or local health department for health care-related purposes.

(4) The SPARCS program shall follow applicable federal and state law when determining whether SPARCS and PRI data contain identifying data elements and whether a disclosure of SPARCS and PRI data constitutes an unwarranted invasion of personal privacy. When the SPARCS program determines that a use of de-identified SPARCS data constitutes an unwarranted invasion of personal privacy under Article 6-A of the Public Officers Law, such data shall not be disclosed.

(5) The SPARCS program shall not deny to any New York State Agency, SPARCS or PRI data required to perform public health or health oversight activities specifically

authorized by New York State law or regulation provided that the applicant complies with the requirements of this section.

(6) NYSDOH programs may use SPARCS data as provided in subparagraph (ii) of paragraph (1) of this subdivision.

(7) Requests for SPARCS and PRI data must be submitted to the SPARCS program using standard data request forms specified by the SPARCS program. Data users shall take all necessary precautions to prevent unwarranted invasions of privacy stemming from any data analysis or release. Data users may not release any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information. Data users bear full responsibility for breaches or unauthorized disclosures of personal information stemming from use of SPARCS or PRI data. Applications for SPARCS or PRI data must provide an explicit plan for preventing breaches or unauthorized disclosures of personal information of any individual who is a subject of the information.

(8) Each data request form must include signed, properly notarized, and complete data use agreements. Data use agreements are required of: a representative of the requesting organization, a representative of each other organization associated with the project, and all individuals who will have access to any data including identifying data elements. The data use agreements shall include, but not be limited to, the following provisions:

(i) All data are confidential and subject to strict limits on disclosure. No data may be released or disclosed in any format for any reason to any other person or entity unless authorized by either the DPRB or the SPARCS program as described in an appropriate, approved data request form.

(ii) The organizational representative and the representatives of any affiliated organization(s) shall provide access to SPARCS and PRI data only to individuals who

have data use agreements on file with the SPARCS program.

(iii) No attempt shall be made to identify or contact any individual who is a subject of SPARCS or PRI data, except where specific authorization is obtained in writing from the DPRB or where otherwise required by law.

(iv) SPARCS and PRI data shall be used only for the explicit purpose(s) stated in the data request form and under any condition of approval.

(v) SPARCS and PRI data shall be kept secure and accessible only by authorized users.

(vi) Matching or linking a SPARCS or PRI data set to any other data set is prohibited unless formally approved by the DPRB.

(vii) SPARCS and PRI data may be retained for two years from when the final requested year's data file is considered complete by the SPARCS program and has been received by the applicant, unless the SPARCS program approves an extension of the retention of the data.

(viii) Any publication, including Web postings, or reports generated from SPARCS or PRI data, will acknowledge the source of the data.

(ix) Unauthorized disclosure of SPARCS or PRI data will result in penalties as specified under subdivision (f) of this section.

(9) The SPARCS program will publish and will make publicly available the name of the project director, the organization, and the title of approved projects except for those projects that use SPARCS or PRI data to perform public health or health oversight activities specifically authorized by law or regulation.

(e) Data Protection Review Board (DPRB).

A Data Protection Review Board is established to ensure that the potential benefits of any release of SPARCS identifying data elements submitted for healthcare recipients shall exceed the risks of unwarranted invasions of personal privacy. The DPRB members shall

be appointed by the Commissioner of Health and DPRB operations will be supported by NYSDOH.

(1) Functions.

(i) The DPRB shall review and make a determination on all requests for access to SPARCS data containing identifying data elements. Requests will be granted only upon formal, written approval for access by the DPRB and only upon subsequent ratification by the Commissioner of Health.

(ii) The DPRB shall approve a request for identifying data elements by an affirmative vote of seven (7) or more of its members at a DPRB meeting.

(iii) Requests for identifying data elements shall be approved only if:

(a) the purpose of the request is consistent with the purposes for which SPARCS and PRI data may be used;

(b) the applicant is qualified to undertake the project; and

(c) The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.

(iv) The DPRB may approve a request in which future SPARCS data is to be supplied on a periodic basis under the following conditions:

(a) SPARCS data may be requested for a predetermined time not to exceed three years beyond the current year provided that the uses of the data remain as indicated in the data request form submitted to the DPRB.

(b) During the period of retention of SPARCS or PRI data, no additional individuals may access SPARCS or PRI data without a signed, properly notarized, and complete data use agreement on file with the SPARCS program.

(v) The DPRB may rescind for cause, at any time, approval of a data request.

(2) Following each DPRB meeting, SPARCS and PRI data requests that have been

approved by the DPRB shall be forwarded to the Commissioner for ratification or disapproval. The Commissioner shall make a determination and return the data request documents to the Executive Secretary of the DPRB within ten (10) business days after receiving the DPRB ratification package. The request may be granted only if both the DPRB approves and the Commissioner ratifies the data request.

(3) Membership.

(i) The DPRB shall consist of thirteen (13) voting members, each of whom may have alternates. The members and the alternates will be appointed by the Commissioner, each for a renewable term of three years. The Commissioner shall appoint one DPRB member as chair and one as vice-chair who will act in the chair's absence.

(ii) Members shall serve without remuneration but may be reimbursed for DPRB member expenses.

(iii) The composition of the DPRB shall include one or more representatives of the following:

(a) New York State government;

(b) Health care facilities or health care facility associations;

(c) Consumers of health care facilities' data or users of health care facilities;

(d) Academic researchers specializing in health;

(e) Health information professionals;

(f) Private third-party payers or commercial insurers;

(g) Quality assurance or utilization review organizations;

(h) Attorneys specializing in health law; and

(i) Medical practice.

(iv) If there is an unexpected absence or a recusal of a DPRB member, the Executive Secretary of the DPRB, or his or her designee, will become a voting member of the

DPRB if needed to establish a quorum.

(f) Penalties.

(1) Any person or entity that violates the provisions of this section or any data use agreement may be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(2) Any person or entity that violates the provisions of this section or any data use agreement may be denied access to SPARCS or PRI data.

Appendix C-2 is repealed.

Appendix C-3 is repealed.

Appendix C-4 is repealed.

Appendix C-5 is repealed.

Section 755.10 is repealed.

Section 405.27 is repealed.

Section 400.14(b) is amended to read as follows:

(b) All requests for [deniable individual or aggregate] PRI data shall be processed pursuant to section 400.18 [(e)] of this [Title] Part.

Section 407.5(g) is amended to read as follows:

(g) Information policy and other reporting requirements.

PCHs/CAHs shall comply with the provision of sections [405.27] 86-1.2, 86-1.3 and 400.18 of this Title regarding information policy and other reporting requirements.

Regulatory Impact Statement Summary

There are three objectives for the revision of 10 NYCRR Section 400.18: deleting obsolete language; realigning the regulation to reflect current practices; and adding new provisions, including provisions for the mandated outpatient services data collection. The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to Section 2816 requiring a new type of data to be collected.

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Regulatory Impact Statement

Statutory Authority:

The Statewide Planning and Research Cooperative System (SPARCS) has been in existence for over thirty years as a nationally recognized health information dataset. From its start in 1979, the authority to collect the data from health facilities was established in Section 405.30 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York. This Section, repealed in 1988 and replaced with the current Section 400.18, specifies the procedures for the collection and disclosure of SPARCS and Patient Review Instrument (PRI) data.

In 1985, Section 97-x of the State Finance Law was established to fund SPARCS with fees collected from hospitals. In 2001, SPARCS was established in Section 2816 of the Public Health Law (PHL). At the same time, the stipulation was added that emergency department data was to be collected from general hospitals. Section 97-x of the State Finance Law was also amended to refer to PHL Section 2816.

Although the 400.18 regulations were modified in 2005 for emergency department data collection, additional changes were put on hold due to the changes taking place with national standards for health data reporting under the Health Insurance Portability and Accountability Act (HIPAA).

On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. With the 2006 revision to Section 2816, the Commissioner of the New York State Department of Health (NYSDOH) is authorized to promulgate regulations to implement the collection of outpatient services data.

Legislative Objectives:

The Legislature has concluded that the SPARCS program has worked well as a tool for planning, research, public information, and health care improvement. Subparagraph (2)(a)(iv) of Section 2816 expands the scope of data collection from health care providers already required to report utilization data to the Department. There are two primary purposes of the collection of the additional data. The first is to aid in the development of new methodologies for calculating Medicaid reimbursement as requested by the federal government. The second is to obtain information on an area of health care that has not been available to the Department to assess access to care for New York State residents.

Specifically, the Department needs to expand the collection of SPARCS with the collection of outpatient services visit data in order to support the accuracy and completeness of Medicaid claims data. More specifically, the Department needs to capture pertinent data to comply with federal requirements for disproportionate share hospital (DSH) payments ($3.2 billion program, see, 42 USC § 1396r-4) and provide benchmarking capabilities for the State's ambulatory care reimbursement system (enhanced ambulatory patient groups or EAPGs and benchmarking of outpatient pricing methodologies. This new data will assist in updating procedure weights, assist in creating procedure base rates, and potentially recalculating provider-specific existing payments for blend in the outpatient setting.

In addition, this will allow the Department, providers, and academics, the increased capacity for additional disease analysis and increase the study of patient care in an area of health care that has not had data readily accessible. The expanded SPARCS data collection will make readily available the creation of opportunities for greater

assistance with planning patient care; assessing access to care concerns; and resource planning for quality improvement measures.

The legislature has recognized that the success of SPARCS over the past thirty years has been the cooperative effort between facilities, associations, and the Department. A system that has been successful in this cooperative environment will continue to be an efficient and effective method of collecting data.

Needs and Benefits:

There are three objectives for revising the regulation:

1) Deleting obsolete language;
2) Realigning regulation to reflect current practices; and
3) Adding new provisions, including provisions for the mandated outpatient services data collection.

The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to Section 2816 requiring a new type of data to be collected. Therefore, due to the substantial changes needed, the Department will repeal Section 400.18 as it exists and promulgate a new Section 400.18.

Provisions Deleted:

The following provisions in the current Section 400.18 will no longer be part of the regulation:

Appendix C-2

Appendix C-3

Appendix C-5

The appendices associated with the current Section 400.18 contain out of date lists of data elements collected by SPARCS. To allow for program flexibility and to maintain up-to-date regulations, the revised Section 400.18 has been written to allow the list and definition of the collected data elements to be maintained by the Commissioner and made available publicly.

In general, the changes in the SPARCS regulations are to align the Department's data collection to current billing practice related to the National Uniform Billing Committee. This regulation would only require facilities to submit data that they already maintain or that may be required by the Commissioner. The revised Section 400.18 does not require facilities to collect any additional data. Data elements are from the medical record, the billing record, or demographic information maintained by facilities.

In the current 400.18, subdivision (b), uniform bill, and Subdivision (c), uniform discharge abstract, along with their associated appendices, delineate and describe the data elements found in the uniform bill (appendix C-2) and in the uniform discharge abstract (appendix C-3). In 1979, these two forms were submitted separately by hospitals and were combined into a single data set by the Department. In the mid-1990s, the two data streams were joined to form the “Universal Data Set for Institutional Providers” (UDS/IP). Thus, appendices C-2 and C-3 are very out-of-date and should be repealed.

In 1996, HIPAA established national standards for health data reporting. SPARCS’ current input data format, ANSI X12-837, is a HIPAA-compliant data set, which is a subset of data elements as found in the national reporting standard. In 2005, Section 400.18 was modified to authorize the collection of emergency service data. The data elements for emergency service data were listed in appendix C-5. Over the years, these lists of data elements have become obsolete, and the SPARCS program maintains

the actual lists and definitions of these data elements. The required data elements are maintained on the Department of Health's website. The current URL is: http://www.health.ny.gov/statistics/sparcs/sysdoc/elements_837/index.htm.

The Department will repeal appendix C-5.

With the HIPAA standards, also came the defined set of data elements that were considered "identifying" (i.e., having the potential to identify an individual patient and infringe on a patient's privacy). SPARCS, being ahead of the national standard, had Section 400.18(a)(2) and 400.18(a)(11) list specific deniable (or identifying) data elements, which, if released, would constitute an unwarranted invasion of personal privacy. However, HIPAA has defined a more inclusive set of data elements aimed at protecting personal privacy. The lists of data elements within Section 400.18, utilized in the disclosure of SPARCS and PRI data, have become obsolete with the implementation of HIPAA. In revised Section 400.18, the list of the data elements allowed in the disclosure of SPARCS and PRI data, as well as those designated as identifying data elements, will be maintained by the Commissioner and made available publicly. The Department will repeal 400.18(a)(2) and 400.18(a)(11), which list the deniable data elements for the SPARCS and PRI data sets respectively.

All data elements that are not specified as identifying are considered non-identifying data elements. In maintaining the list of identifying data elements, SPARCS will take into consideration any changes in federal law. In the revised Section 400.18, requests for SPARCS and PRI data containing identifying data elements continue to require approval by the Data Protection Review Board and ratification by the Commissioner.

Current section 400.18(d) specifies the method by which SPARCS identifies ambulatory surgery data in the SPARCS file. In the revised Section 400.18, the method

that SPARCS uses to differentiate data types (inpatient, ambulatory surgery, emergency department, and outpatient services) will be unified and maintained by the Commissioner. This methodology will allow SPARCS greater flexibility in adapting to changes in the health care facilities' billing environment.

Current section 400.18(f) contains provisions and regulations for a Council on Hospital Information Policy. That body was established in the original 1979 SPARCS regulations but was never convened. It is currently deemed unnecessary.

Current section 400.18(g), Accounting and reporting, pertains to the policy and procedures for the maintenance of hospital accounts and records and the acceptable policies and instructions for submission of the Institutional Cost Reports to the Department of Health's Bureau of Primary and Acute Care Reimbursement. As this subdivision does not apply to the operation of the SPARCS unit, the 400.18(g) language has been moved to Section 86-1.3.

Aligning Regulation to Current Practice:

Over the past thirty years, the collection of health information and the specifications for information technology (IT) have changed significantly. Although a leader in the collection and protection of patient information in 1979, SPARCS has adapted to a number of changes in the national billing standards. To ensure continued success, SPARCS is aligning itself with the national electronic billing standards and the HIPAA environment regarding the protection of private health information.

The revised Section 400.18 significantly reorganizes and modifies the regulation to align the current functions of the SPARCS program, the collection and maintenance of SPARCS data, and the disclosure of SPARCS and PRI data.

In the existing regulations, inpatient, emergency department, and ambulatory surgery data are submitted on different timetables. Some of the reporting timetables differ from existing Section 400.18. The reporting timetable for inpatient hospital-stay data had been found in Section 86-1.3(f). The reporting timetable for free-standing ambulatory surgery data, along with the list of collected data elements, is found in Section 755.10. Providers strongly prefer a single-collection timetable for all types of SPARCS data. The current practice, implemented in 2008, allows all health care facilities to report all types of SPARCS data on a single timetable. The revised Section 400.18 aligns the regulation to the existing practice and places the reporting requirement for all SPARCS data within Section 400.18.

Section 400.18 continues to allow the Commissioner to specify fees to be charged to access SPARCS data. The practice to charge fees for the data is an accepted custom for users of the SPARCS data since the 1979 inception of the system; the fees typically support the maintenance of the system. The base fee is the amount charged to the approved data requester for a year's worth of specified data (either inpatient, ambulatory surgery or emergency department data). The fee, which is kept at a nominal value, is derived from the cost associated with data acquisition, data storage and programming required to create the output file. That base fee may be discounted or waived by the Commissioner when Department functions will be advanced by disclosure of such information. Additional charges may apply for a specific requester based upon the need for encryption and for the addition of approved identifiable data elements.

Health care facilities will continue to receive their own data without cost. Health care facilities may also receive the entire SPARCS data set when the reason for the request is either rate determinations or rate appeals. They may receive without cost only the types of SPARCS data (inpatient, emergency department, ambulatory surgery, or

outpatient services) that the facility itself has submitted. The fees for SPARCS or PRI data have been waived for New York State agencies and New York State county and local health departments receiving SPARCS data for health care related purposes. In addition, the Commissioner may waive the fee upon written request in furtherance of the Department's powers and duties.

Revised Section 400.18 modifies the rules governing the Data Protection Review Board (DPRB). The number of Board members is reduced from seventeen to thirteen. In recent years, the number of DPRB members actually appointed and serving has averaged thirteen due to difficulties in recruiting and retaining members.

In addition, the stakeholder categories, of which DPRB membership must be representative, are modified. The categories of "federal government" and "residential health care facility providers" are deleted. Obtaining a member from the federal government has proven difficult, and the PRI data set is no longer collected data from residential health care facilities.

The revised Section 400.18 provides a mechanism for a DPRB revocation of an approved DPRB application. This provision has been added in the event that a data user either: fails to follow the provisions of the application or fails to abide by the data use agreement or fails to pay any required fees.

New Provisions:

Several new provisions are being added to improve the operations of SPARCS, release of the data, and the collection of the new outpatient services. They are: DPRB Improvements, and Enhanced Oversight, Enhanced Privacy Protection and Expanded Scope.

DPRB Improvements:

Changes to Section 400.18 have also been made to ensure that quorum is met at DPRB meetings. The revised regulation allows each DPRB member to have an alternate who would substitute for the associated Board member unable to attend a meeting. A related change authorizes the Executive Secretary of the DPRB to serve as a voting member of the Board if that service is needed to establish quorum. Voting status of the Secretary is limited to situations of unanticipated absence or recusal of a Board member. The revised Section 400.18 also modifies the manner in which a DPRB application is approved. In the existing regulation, the DPRB is allowed to override the Commissioner's veto of a DPRB-approved application. The proposed revision eliminates the override provision, which may be an unconstitutional delegation of the Department's authority. Ratification by the Commissioner of all DPRB-approved applications is retained.

Enhanced Oversight:

The revised Section 400.18 contains two provisions to increase the quality of the SPARCS data. The first provides that a health care facility's Chief Executive Officer or his/her designee, the Chief Information Officer, or the Chief Financial Officer, submit an annual, notarized statement attesting to the accuracy of the SPARCS data submitted. The second provision allows audits of SPARCS data to be conducted to determine the accuracy of the data submitted. If an audit is conducted, an audit report will be generated outlining any deficiencies. Health care facilities will have 90 days to replace any data found to be incorrect.

Enhanced Privacy Protections:

To protect the privacy of patients in the presentation of SPARCS and PRI data, and ensure compliance with the State Personal Privacy Protection Law, Section 400.18 currently specifies that an aggregation of individual patient data comprising fewer than six patients may not be released. The proposed revision acknowledges that this policy is not, by itself, sufficient protection against unwarranted invasions of personal privacy. The revision requires that the data access application specify the methods that the data users will employ to protect patients' privacy in the presentation of data analysis results. Failure to adopt privacy protection methods deemed adequate by the DPRB shall be cause for denial of a data access request.

Expanded Scope:

Revised Section 400.18 operationalizes the collection of the new outpatient services data as mandated by Section 2816 of the PHL. This new data type will require reporting from facilities on new information not previously collected by the Department.

Costs

Cost to Regulated Entities:

For the past thirty years, for SPARCS purposes, regulated entities have been Article 28 hospitals and D&TCs licensed to perform ambulatory surgery. The success of SPARCS has been due to the close alignment of the claim format that facilities must employ in their financial environment. Thus, the changes that a facility must make to their financial systems due to national standards, are the very similar to the changes in SPARCS.

Therefore, the Legislature mandated, in PHL 2816(2)(a)(iv) for the collection of outpatient services data, is viewed as an existing "type of data" that facilities have already

been sending through their financial/billing systems. SPARCS has not requested this data until now. Thus, it is expected that costs will be minimal for this "type of claim data" that has already been sent to payers. In essence, SPARCS is simply being treated as a "payer" that will now receive all claim information from a facility.

In order to verify this assumption, SPARCS conducted a survey. Information was solicited from licensed Article 28 facilities. A majority of the facilities indicated that their billing systems were integrated and with the emergence of electronic medical records more facilities will have integrated systems within the future. In total, the facilities should see minimal cost in meeting the new data-reporting requirement.

For any enhancements that may be needed, funds are available from external sources. The Health Information Technology for Economic and Clinical Health (HITECH) Act, which is part of the American Recovery and Reinvestment Act (ARRA) of 2009 stimulus package, allows health care facilities to seek funds for the costs of computer programming and hardware needed to implement electronic medical records.

Cost to State and Local Governments:

Currently, the revisions to the SPARCS regulations have only one provision, the mandated collection of outpatient services, that would affect state and local government owned health care facilities. Fortunately, the county operated facilities will not be affected by this data collection as the data collection is being limited to existing hospital submitters.

Cost to the Department of Health:

The SPARCS Special Revenue Account, authorized under Section 97-x of the State Finance Law, is expected to absorb the cost for the development and maintenance of SPARCS data. The Department computer systems will house the existing SPARCS data that will include the collection of the additional 20 million records expected for the hospital outpatient services data.

Local Government Mandates:

Article 28 facilities operated by local governments will be required to submit SPARCS data in the same manner as other Article 28 facilities.

Paperwork:

Paperwork associated with the new data-reporting requirement is expected to be minimal.

Duplication:

The regulation will not duplicate, overlap, or conflict with federal or state statutes or regulations. All other state systems collecting health care facility data are payer or disease-specific. SPARCS data differ in that the data are collected from all payers and for all diseases and procedures.

Alternatives:

The collection of outpatient services data is mandated by law. There are no timely alternatives for the collection of these data.

Federal Standards:

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

Compliance Schedule:

Article 28, Section 2816(2)(a)(iv) became effective in April 2006. SPARCS required an upgrade from the mainframe-based system to store and process the very high volume of data expected. SPARCS began the first collection of the outpatient services data for the discharge/visit year 2011. The data started to be collected in August 2011 based upon need by the Department of Health.

There are other sections of Title 10 repealed or amended to conform to the revision of Section 400.18:

Section 755.10 will be repealed. The content of this section has been incorporated into the proposed Section 400.18.

Section 405.27 will be repealed. The content of this section has been incorporated into the proposed Section 400.18 and Section 86-1.2, and Section 86-1.3.

Section 400.14(b) will be amended to conform to the revised Section 400.18.

Section 407.5(g) will be amended to add citations to Section 86-1.2 and Section 86-1.3 in place of the repealed Section 405.27.

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Regulatory Flexibility Analysis For Small Businesses and Local Governments

Effect of Rule:

The State Administrative Procedure Act (SAPA 202-b) defines a small business as "being resident in this State, having fewer than 100 employees, independently owned and operated." The primary purpose of the revision of section 400.18 is to delete obsolete language; to realign regulation to reflect current practices; and to add new provisions, including rules and regulations for the mandated, outpatient services data collection. Of these modifications, the collection of the outpatient services data, mandated in the April 2006 modifications to Public Health Law Article 28 Section 2816(2)(a)(iv), may impact small businesses.

The collection of outpatient services data will impact two categories of small businesses in New York State:

1) Small Health Care Facilities, which will be required to submit data; and

2) Software vendor companies, which will need to make modifications to existing programs.

There are a number of small facilities in NYS. They will be defined in terms of: the small number of visits per year and their level of information technology (IT) support within the facility. Depending upon the level of computer support, the small facility may be affected differently by the provisions relating to the data collection. Smaller facilities tend not to have a large IT department, and are more likely to need vendor involvement for a customized program for data submission.

The second small business category affected is small software vendors (computer companies). These companies will be used as consultants/contractors to modify existing billing systems to produce the SPARCS file. This group will benefit from increased revenue generated by the request for improved systems.

Compliance Requirements:

As the SPARCS file is generated from the existing health care facilities' records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

Professional Services:

The outpatient services data collection is expected to increase opportunity for professional computer services due to the modifications of the billing programs required to create the SPARCS file. Once the outpatient services data set has been collected, there will be an increase in employment opportunities for health care researchers, policy makers, and other professionals involved in the use of the health care data.

Compliance Costs:

Most small facilities may incur minimal cost of modifying their billing systems to produce the SPARCS file.

Facilities requiring a custom computer program add-on for their existing billing system or modification of the software utilized by their external billing vendor from a private vendor will incur costs ranging from $10,000 to $15,000.

After the initial cost for system enhancements for a facility, the annual cost to maintain compliance with the proposed rule will be minimal. The SPARCS staff in the Department of Health provide free assistance to health care facilities in the correction of errors in the SPARCS data submissions. In addition, the Health Department's Health Commerce System (HCS) provides for the secure transmission of the SPARCS file to the Department of Health at no cost to the facility.

Economic and Technological Feasibility:

It should be technologically feasible for small businesses to comply with the proposed regulations. Most facilities should not need to hire additional professional or administrative staff to comply with these regulations, as the computer program to create the SPARCS file should be very similar to other electronic billing systems. All facilities must use the HCS to submit the data in a secure environment, and facilities must maintain internet connectivity.

Minimizing Adverse Impact:

A significant impact of this regulatory change is the collection of the outpatient services data for health care facilities that have never submitted data to the Department of Health.

Adverse impact can be minimized through the availability of training. There was a focused effort on training prior to the commencement of data collection. SPARCS provided training for SPARCS coordinators to assist them in reporting the data.

In 2009, SPARCS conducted a written survey of small health care facilities to determine the names of the billing programs and the billing companies that they use. It was discovered that many small facilities do not have a billing "department" but rather a billing "person" who also functions as the office manager. It was also discovered that some small facilities do not produce an electronic format of the bill. As a result of these discoveries, SPARCS will exclude from reporting, any small facility that does not produce an electronic format of their bill for their services.

SPARCS will defer collection of data from dental clinics to some time in the future because dental clinics use a different electronic claim form than the Institutional

format of the ANSI X12-837 that SPARCS currently requires. Furthermore, smaller facilities that are self-funded or grant-funded will be excluded from the requirement to submit SPARCS data.

Small Business and Local Government Participation:

SPARCS is dedicated to maintaining a cooperative system. To do this, SPARCS holds regional meetings to elicit comments directly from health care facilities, and SPARCS attends meetings with health care associations New York Health Information Management Association (NYHIMA), Community Health Care Association of New York State (CHCANYS), and Healthcare Association of New York State (HANYS)). In addition, SPARCS is dedicated to continuing training and providing educational material for the purpose of submitting and correcting SPARCS data.

Data submission is a requirement for Article 28 health care facilities, but there are benefits also for the facilities, themselves, and for the local governments with which they are associated. A small query database containing aggregated data is available free of charge to all facilities and local government personnel that have an active account on the HCS. This access provides basic health care information for all HCS users. In addition, facilities can always download their own patient level records at any time thru the secure feature on the HCS.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 17% of small health care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

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

The majority of the revisions of Section 400.18, i.e., deletion of obsolete language and updates to the regulation to reflect current practices, do not adversely impact health care facilities in rural areas. The addition of the provision to collect a new data type, outpatient services data, however, will have varying degrees of impact on facilities. To minimize this impact, training was provided during 2011. Training will also be provided on a web based environment.

In addition, SPARCS will provide a specialized time schedule for any facility that is upgrading their system or undergoing a system transition to electronic medical records.

The greatest impact in a rural area would occur if a small facility continued to maintain some portion of its practice volume on paper medical records. At some point, the facility may need to purchase an electronic billing program or contract with a billing company. Fortunately, our 2009 survey found most small health care facilities have some electronic form of recordkeeping due to the requirements of most insurance companies that bills be submitted electronically.

Costs:

The cost of compliance with the new outpatient services data collection requirement for rural-area facilities will be primarily due to initial capital costs, particularly involving staff training and information technology (IT) development. Recurring annual costs will be for staffing resources necessary to submit the data.

The initial capital expenditure level will vary, primarily depending on the health care facility's IT infrastructure and billing software. For facilities currently submitting data to SPARCS, they will have little increased capital costs except for minor changes to their existing billing systems. For new submitters that need to improve their electronic billing capabilities, they may incur custom computer additions to their existing billing programs from a private vendor ranging from $10,000 to $15,000.

Minimizing Adverse Impact:

Adverse impact can be minimized through the acquisition of grants and through the availability of training. Facilities may be eligible for funds from the Health Information Technology for Economics and Clinical Health (HITECH) Act grants to cover some of their costs for acquiring computer products. For those facilities in rural areas, electronic medical records would allow the submission of data to health insurance carriers. Additionally, any investment in electronic medical records would enhance the facilities' ability to comply with SPARCS reporting because a majority of the same information that is sent to the insurance carrier is sent to the Department of Health for SPARCS reporting.

There was a focused effort on training prior to the commencement of data collection. SPARCS will continue to provide training for SPARCS coordinators to assist

them in reporting the data. In addition, training will be provided to the vendors who will be involved in data submission.

Hospitals have been submitting data to SPARCS for over thirty years. Most hospital outpatient departments have computer systems that are already integrated into the main hospital system or are in the process of being integrated. Thus, the computer program logic has been created, and the additional flow of information should be of minimal impact.

Rural Area Participation:

Regional meetings were held to inform and obtain comments from health care facilities located in all areas of the state.

Although some may view this reporting requirement as an additional burden, there are also benefits for the facilities, themselves, and for the local governments with which they are associated. A facility's own data will be available free of charge for all facilities. In addition, local governments that have an account on the NYS Department of Health's "Health Commerce System" (HCS) will have access to a small query tool. This allows access to health care information that all can use.

Job Impact Statement

Nature of Impact:

Very little impact on jobs is expected. To the extent that there is an impact, the addition of the outpatient data submission requirement will positively impact jobs and employment opportunities. For those reporting health care facilities requiring a custom computer program to create the SPARCS file, either their existing billing program will need modification by internal IT staff, or an external vendor will be required to create a custom program. For those health care facilities that will switch to electronic records, there will be increased business in sales and customization of the billing programs.

Categories and Numbers Affected:

The jobs created will be computer programming positions (needed for the custom programs to submit SPARCS data), sales positions, and technical training positions. SPARCS conducted two brief outreach questionnaires of the health care facilities impacted by this mandate. In 2007, 574 hospital-affiliated health clinics responded to a questionnaire regarding their ability to submit data electronically. Of those, 96% reported that they submit some or all of claims electronically.

In 2009, 832 free-standing diagnostic and treatment centers responded to a questionnaire regarding specific electronic submission capability. Facilities that reported that they currently submit some or all claims electronically accounted for 61% of all respondents. Of those, 27% responded that their internal billing product would be modified as necessary to submit SPARCS data, while 67% did not know what course of action they would take to modify their existing billing system.

Regions of Adverse Impact:

The revised section 400.18 will have no adverse impact on jobs or employment opportunities.

Minimizing Adverse Impact:

As the revised section 400.18 has no adverse impact on jobs or employment opportunities, there is no need to minimize adverse impacts.

Self-employment Opportunities:

In very few instances, health care facilities may rely on self-employed programmers to develop the needed programming to submit and correct SPARCS data. To date, we have had only one instance of this over SPARCS' 30-year, data-collection history.

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

June 7, 2012

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

Acute Care Services – Construction **Exhibit #3**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112323 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County)	Contingent Approval

Public Health and Health Planning Council

Project # 112323-C
New York Presbyterian Hospital – Columbia Presbyterian Center

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

Program: **Acute Care Services**
Submitted: **December 5, 2011**

Executive Summary

Description
New York Presbyterian Hospital – Columbia Presbyterian Center, a 977-bed not-for-profit hospital located in New York County, requests approval to create an 18 bed bone marrow transplant (BMT) unit, comprised of 12 BMT beds and 6 medical surgical beds. To create the 18 bed BMT unit, New York Presbyterian proposes to add 18 net new beds as follows:

- Add 8 new allogeneic BMT (ABMT) beds;
- Transfer 4 existing ABMT beds from 6 Garden North; and
- Add 10 medical surgical beds for autologous patients and readmissions.

Total project costs are estimated at $18,074,577.

DOH Recommendation
Contingent approval.

Need Summary
The proposed project will expand capacity to meet a growing need for BMT services in the area and improve quality of care by reducing the need to transfer patients in need of allogeneic care to New York Presbyterian's Weill Cornell facility and to other providers. The consolidation of BMT services into a contiguous, dedicated Bone Marrow Transplant Unit will also improve the efficiency and quality of care in the New York Presbyterian – Columbia program.

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 via equity from the hospital.

Incremental Budget:	*Revenues:*	*$ 20,275,181*
	Expenses:	*19,278,849*
	Gain/(Loss):	*$ 996,332*

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

Architectural Summary
This project involves the renovation of 9,300 SF of the 11th floor of the 15-story Harkness Pavilion, from office space to an 18-bed bone marrow transplant inpatient unit. A mechanical equipment room will also be added to the existing roof.

Recommendations

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

Office of Health Systems Management
Approval contingent upon:

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

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by September 6, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
June 7, 2012.

Need Analysis

Background

Below lists New York Presbyterian Hospital - Columbia Presbyterian Center's certified beds, and recent utilization history:

	Certified Beds		
	Current Beds	*Proposed Change*	*Total Upon Completion*
AIDS	14	0	14
Bone Marrow Transplant	4	+8	12
Chemical Dependence - Detox	3	0	3
Coronary Care	18	0	18
Intensive Care	99	0	99
Maternity	58	0	58
Medical/Surgical	541	+10	551
Neonatal Continuing Care	11	0	11
Neonatal Intensive Care	14	0	14
Neonatal Intermediate Care	33	0	33
Pediatric	100	0	100
Pediatric ICU	41	0	41
PM&R	16	0	16
Psychiatric	25	0	25
Total	*977*	*+18*	*995*

Occupancy Rates by Major Service Category

Service	*2006*	*2007*	*2008*	*2009*	*2010*
Medical/Surgical	84.8%	81.8%	81.8%	82.9%	84.2%
Pediatric	59.1%	63.1%	63.8%	62.8%	59.6%
Obstetric	83.6%	84.3%	81.4%	88.4%	87.1%
General Psychiatric	117.6%	116.4%	118.0%	116.8%	118.4%
Chemical Dependency	193.3%	183.3%	163.3%	173.3%	233.3%
High Risk Neonates	104.8%	98.4%	112.1%	117.6%	105.7%
Total	*83.4%*	*81.4%*	*82.2%*	*83.5%*	*83.5%*

Source: SPARCS 2006-2010

Need

The Bone Marrow Transplant Programs of NYP Columbia and NYP Weill Cornell treat patients with leukemia, lymphoma, aplastic anemia, immune deficiency disorders, and some solid tumor cancers. A significant number of these patients must have an allogeneic transplant to survive. Because NYP/Columbia does not currently treat allogeneic patients, many are referred to NYP/Weill Cornell or other facilities. These transfers are disruptive to care and are also often done at a time when the patient is most physically and emotionally vulnerable. These interruptions can also result in the patient's being placed on a transplant waiting list, depending on the hospital they choose and the timing of their appointments. The proposed project is intended to obviate the need for these referrals, ensuring better continuity and quality of care and greater efficiency in the delivery of services to allogeneic BMT patients.

Analysis

NYP Columbia's service area for hematologic malignancy services and the bone marrow transplant program is defined as the five boroughs of New York City and Westchester County.

The following tables show the service area's incidence and mortality rates for those cancers with which BMT treatment is most associated:

Local Incidence and Mortality – New York State

New York City 2004-2008

	Incidence					
	Males			*Females*		
Cancer	*Average Annual Cases*	*Rate per 100,000 Males*	*95% CI (+/-)*	*Average Annual Cases*	*Rate per 100,000 Females*	*95% CI (+/-)*
Hodgkin lymphoma	141.6	3.6	0.3	121.6	2.7	0.2
Non-Hodgkin lymphoma	827.8	23.3	0.7	739.4	15.6	0.5
Multiple myeloma	279.4	8.2	0.4	292.0	6.0	0.3
Leukemia	486.4	14.2	0.6	408.4	8.7	0.4

Westchester County

	Incidence					
	Males			*Females*		
Cancer	*Average Annual Cases*	*Rate per 100,000 Males*	*95% CI (+/-)*	*Average Annual Cases*	*Rate per 100,000 Females*	*95% CI (+/-)*
Hodgkin lymphoma	14.6	3.2	0.7	19.0	4.1	0.8
Non-Hodgkin lymphoma	126.4	27.7	2.2	116.0	19.1	1.6
Multiple myeloma	42.0	9.0	1.2	32.0	5.1	0.8
Leukemia	84.6	18.7	1.8	66.6	10.9	1.2

New York City 2004-2008

	Mortality					
	Males			*Females*		
Cancer	*Average Annual Deaths*	*Rate per 100,000 Males*	*95% CI (+/-)*	*Average Annual Deaths*	*Rate per 100,000 Females*	*95% CI (+/-)*
Hodgkin lymphoma	19.4	0.5	0.1	13.4	0.3	0.1
Non-Hodgkin lymphoma	236.0	7.1	0.4	220.2	4.5	0.3
Multiple myeloma	110.8	3.4	0.3	118.2	2.4	0.2
Leukemia	248.2	7.6	0.4	217.0	4.5	0.3

Westchester County

	Mortality					
	Males			*Females*		
Cancer	*Average Annual Deaths*	*Rate per 100,000 Males*	*95% CI (+/-)*	*Average Annual Deaths*	*Rate per 100,000 Females*	*95% CI (+/-)*
Hodgkin lymphoma	1.6	0.4	0.3	3.4	0.6	0.3
Non-Hodgkin lymphoma	36.6	8.3	1.2	34.0	5.2	0.8
Multiple myeloma	17.0	3.8	0.8	16.6	2.5	0.5
Leukemia	39.4	9.0	1.3	33.4	5.1	0.8

The data in these tables show that in each of the counties in the service area, the incidence, mortality, or both, of one or more of the selected cancers with which bone marrow transplants are often associated are higher for males or females, or both, than for New York State as a whole.

The proposed expansion of BMT services at NYP/Columbia, including the proposed allogeneic care, will help meet a steadily growing need for BMT services in the New York City and Westchester areas.

As shown in the following table, the combined discharges of the NYP/Columbia and NYP/Weill Cornell BMT programs have increased by more than 25 percent over the past five years.

		2007		2008		2009		2010		2011	
Center Name	*DRG*	*Discharges*	*Patient Days*	*Discharges*	*Patient Days*	*Discharges*	*Patient Days*	*Discharges*	*Patient Days*	*Discharges*	*Patient Days*
Columbia	Allogeneic BMT	-	-	-	-	-	-	-	-	-	-
	Autologous BMT	11	270	17	612	19	438	11	242	8	178
Total		*11*	*270*	*17*	*612*	*20*	*443*	*11*	*242*	*9*	*196*
Weill Cornell	Allogeneic BMT	37	1,601	37	1,349	52	2,198	61	2,366	84	3,127
	Autologous BMT	69	1,678	79	1,815	60	1,295	72	1,525	56	1,124
Total		*106*	*3,279*	*116*	*3,164*	*112*	*3,493*	*133*	*3,891*	*140*	*4,251*
Grand Total		*117*	*3,549*	*133*	*3,776*	*132*	*3,936*	*144*	*4,133*	*149*	*4,447*

Projected visits for NYP Columbia's BMT program are listed below. The average length of stay for each year is expected to be 29 days. Projections are based on program growth over the past three years.

New York Presbyterian Columbia Projected BMT

Year 1		*Year 2*		*Year 3*	
Discharges	*Patient Days*	*Discharges*	*Patient Days*	*Discharges*	*Patient Days*
36	1,066	48	1,410	72	2,115

Source: New York Presbyterian Columbia University Medical Center

Conclusion

The proposed project will expand capacity to meet a growing need for BMT services in the area and improve quality of care by reducing the need to transfer patients in need of allogeneic care to NYP's Weill Cornell facility and to other providers. The consolidation of BMT services into a contiguous, dedicated Bone Marrow Transplant Unit will also improve the efficiency and quality of care in the NYP/Columbia program.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

New York Presbyterian Hospital - Columbia Presbyterian Center requests approval to expand their bone marrow transplant (BMT) program through the addition of eight BMT beds (for a total of 12) for allogeneic transplants and the addition of six medical/surgical beds for autologous transplants. The hospital will co-locate the 18 beds in one dedicated unit.

Additionally the hospital is requesting certification of another four medical/surgical beds in the current location of the current (four) BMT beds, for a total of 18 new beds

Staffing is expected to increase to 72 BMT FTEs by the third year of expanded operation.

Compliance with Applicable Codes, Rules and Regulations

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

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.

New York Presbyterian has been fined six times for a total of $117,000 in the past ten years for violations related to resident working hours. The most recent fine was levied in 2005.
This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $18,074,577, itemized as follows:

Renovation and Demolition	$9,949,060
Asbestos Abatement or Removal	385,000
Design Contingency	994,906
Construction Contingency	994,906
Architect/Engineering Fees	1,492,359
Other Fees (Consultant)	2,282,000
Moveable Equipment	1,875,491
CON Fee	2,000
Additional Processing Fee	98,855
Total Project Cost	$18,074,577

Project costs are based on a November 8, 2012 construction start date and a ten month construction period.

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

Operating Budget

The applicant has submitted an incremental operating budget, in 2012 dollars, for the first and third years, summarized below:

	Year One	Year Three
Revenues:		
Inpatient	$8,808,927	$20,275,181
Total Revenues	$8,808,927	$20,275,181
Expenses:		
Operating	$8,195,709	$18,200,968
Capital	1,077,881	1,077,881
Total Expenses	$9,273,590	$19,278,849
Excess of Revenues over Expenses	($464,663)	$996,332

Cost Per Discharge	$127,035.48	$118,275.15
Utilization:		
Discharges	73	163

Utilization, broken down by payor source, during the first and third years is as follows:

	Year One	Year Three
Medicare	45.20%	47.23%
Medicaid	24.65%	23.31%
Self Pay/Third Party	30.15%	29.46%

Capability and Feasibility

The hospital will provide equity of $18,074,577 via operations to meet the total project cost. Presented as BFA Attachment A, is a financial summary for New York Presbyterian Hospital, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget projects an excess of incremental revenues over expenses of ($464,663) and $996,332 during the first and third years, respectively. Revenues are based on the facility's current reimbursement rates for DRG's expected to be serviced in the new space, forecasted at historical payor mix.

As shown on BFA Attachment A, the applicant had an average positive working capital position and an average positive net asset position during 2010 and 2011. The hospital achieved an excess of operating revenues over expenses of $114,833,000 and $180,050,000 during 2010 and 2011, respectively.

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

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Background

This project involves the renovation of 9,300 SF of the 11th floor of the 15-story Harkness Pavilion from office space to an 18-bed bone marrow transplant inpatient unit. A mechanical equipment room will also be added to the existing roof.

The renovation will include 18 single inpatient rooms with adjacent shower/toilet rooms, including 1 ADA accessible inpatient room and 1 ADA/ negative isolation patient room with anteroom. The renovation will also include clean and soiled rooms, medication and nourishment alcoves, nurses' station, staff work room, physician office with secretary, head nurse office, staff locker room, staff toilet, conference room, patient day room, public toilet room, janitor's closet and data room.

Environmental Review

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary - 2010 and 2011 certified financial statements of New York Presbyterian Hospital
BHFP Attachment	Map

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

June 7, 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

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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	111444 C	Lincoln Medical and Mental Health Center (Bronx County) Dr. Boufford – Abstaining Dr. Martin - Interest Dr. Sullivan – Recusing	Contingent Approval
2.	121088 C	Millard Fillmore Suburban Hospital (Erie County) Mr. Booth - Interest	Contingent Approval

Long Term Home Health Care Program – Construction **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121093 C	St. Cabrini Nursing Home (Westchester County) Mr. Fassler - Interest	Approval

Public Health and Health Planning Council

Project # 111444-C

Lincoln Medical and Mental Health Center

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

Program: **Acute Care Services**
Submitted: **May 21, 2011**

Executive Summary

Description

Health and Hospitals Corporation (HHC), a public benefit corporation which operates numerous health care facilities in New York City, is seeking approval to construct a new 30-bed Psychiatric Inpatient Unit at Lincoln Medical and Mental Health Center, located at 234 East 149th Street, Bronx. The applicant also seeks approval to add 15 beds to its currently approved 45 psychiatric beds, for a total 60 psychiatric beds. This action will result in a net increase of 15 beds from the current certified capacity. Lincoln Medical and Mental Health Center has actively operated 33 psychiatric beds and held the remaining 12 beds as inactive. It should be noted that the applicant officially reduced bed capacity from 55 to 33 in 1997 with NYS Office of Mental Health approval, thus explaining why only 33 beds are active within the facility.

The requests for the additional beds are due to Cabrini Medical Center's of closure of 30 psychiatric beds in 2008 and the closures of St. Vincent Catholic Medical Center and North General Hospital in 2010. This project will allow Lincoln Medical and Mental Health Center to meet the need for additional psychiatric services occasioned by the closure of these two hospitals.

Total project costs are estimated at $5,380,588.

DOH Recommendation

Contingent approval

Need Summary

Lincoln Medical and Mental Health Center seeks to expand its psychiatric unit, in order to respond to the community's need for its services. Based on its current growth pattern and assuming a length of stay of 14-18 days, Lincoln would need between 47and 57 beds in order to operate at an 85% level. At the current rate, the request for 15 additional beds will provide the hospital with the needed capacity and still leave some room for surge volume.

To assist in this endeavor, the hospital was awarded a HEAL-NY Phase 18 grant. The HEAL grant was awarded in a joint review and decision making process between the Department and the Office of Mental Health.

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 cash of $18,088 and a HEAL-NY Phase 18 grant of $5,362,500.

Incremental Budget:		
	Revenues:	*$ 11,211,611*
	Expenses:	*5,413,304*
	Gain/(Loss):	*$ 5,798,307*

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

Architectural Summary

The applicant is requesting approval to construct a new 30-bed Inpatient Psychiatric Unit. The proposed space is located on the 10th floor, C-Wing, of the existing 10-story hospital. The floor area to be renovated is approximately 12,300 SF. The unit will include thirteen semi-private rooms and four private rooms.

Recommendations

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

Office of Health Systems Management
Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01). [AER]

Approval conditional upon:

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

Council Action Date
June 7, 2012.

Need Analysis

Background

Lincoln Medical and Mental Health Center (Lincoln) is a 347-bed acute care hospital located at 234 East 149th Street, Bronx. The facility is seeking CON approval to construct a new 30-bed psychiatric inpatient unit and add 15 net new psychiatric beds, for a total complement of 60 psychiatric inpatient beds.

Lincoln Medical and Mental Health Center has the following certified beds and services:

Table 1:
Lincoln Medical and Mental Health Center: Certified Beds by Service

Bed Category	*Certified Capacity*	*Requested Action*	*Capacity Upon Completion*
Coronary Care	7		7
Intensive Care	23		23
Maternity	35		35
Medical / Surgical	177		177
Neonatal Continuing Care	10		10
Neonatal Intensive Care	5		5
Neonatal Intermediate Care	5		5
Pediatric	32		32
Pediatric ICU	8		8
Psychiatric	45	+15	60
Total	*347*	*+15*	*362*

Table 2:
Lincoln Medical and Mental Health Center: Certified Services.

AIDS Center	Ambulance
Ambulatory Surgery - Multi Specialty	Audiology O/P
CT Scanner	Certified Mental Health Services O/P
Chemical Dependence - Rehabilitation O/P	Chemical Dependence - Withdrawal O/P
Clinical Laboratory Service	Coronary Care
Dental O/P	Emergency Department
Family Planning O/P	Intensive Care
Linear Accelerator	Lithotripsy
Maternity	Medical Social Services
Medical/Surgical	Methadone Maintenance O/P
Neonatal Continuing Care	Neonatal Intensive Care
Neonatal Intermediate Care	Nuclear Medicine - Diagnostic
Nuclear Medicine – Therapeutic	Pediatric
Pediatric Intensive Care	Pharmaceutical Service
Physical Medicine and Rehabilitation O/P	Primary Medical Care O/P
Psychiatric	Radiology - Diagnostic
Radiology-Therapeutic	Renal Dialysis - Acute
Renal Dialysis - Chronic	Respiratory Care
Therapy - Occupational O/P	Therapy - Physical O/P
Therapy - Speech Language Pathology	Therapy - Vocational Rehabilitation O/P

New York State Designations:

- AIDS Center;
- Level 3 Perinatal Center;
- Regional Trauma Center;
- SAFE Center; and
- Stroke Center.

In order to relieve overcrowding in its Psychiatric Emergency Room and to improve access for patients in need of psychiatric beds, Lincoln Hospital proposes to construct a new 30-bed inpatient psychiatric unit and add 15 net new beds to its existing NYSDOH certified 45-bed unit.

Lincoln Hospital's original psychiatric unit consisted of 60 beds. However, in the 1990's its NYSDOH license was reduced to 45 beds. Currently, Lincoln is staffing/operating 33 psychiatric inpatient beds. The Office of Mental Health (OMH) also licenses the hospital. During the downsizing period, the OMH licensed capacity was reduced to 33 beds.

The new unit will utilize a multi-disciplinary team approach that is already in effect on the existing unit. The team will be comprised of the following:

- Unit Chief (Attending Psychiatrist),
- Clinical Nurse Practitioner,
- Clinical Psychologist,
- Masters level Social Worker,
- Bachelors level Case Worker,
- Substance Abuse Counselor,
- Senior Rehabilitation Counselor, and
- complement of RNs, LPNs and other nursing personnel that will result in a ratio of 5 patients to each member of the nursing staff.

By opening the new unit, Lincoln seeks to accomplish the following:

- improve access to services to patients requiring inpatient psychiatric care;
- reduce wait time in the Psychiatric Emergency Rooms for its patients that needs to be admitted into the hospital;
- decompress the general emergency area and reduce wait time;
- reduce the number of transfers, thereby, keeping patients closer to their families;
- reduce length of stay in order to stabilize and improve patient function; and
- return patients to their local communities for after care.

Analysis

In 2005, Lincoln Hospital recorded 376 inpatient psychiatric discharges. These discharges increased by 63.6 percent, to 615 in 2006. In 2007 and 2008, psychiatric discharges declined to 520 and 491, respectively. By 2009, the declined in psychiatric inpatient discharges at Lincoln reversed, and the hospital experienced a 27.1 percent increase to 624 patients. The growth continued in 2010. Between 2009 and 2010, psychiatric discharges at Lincoln increased by 25.6 percent, to 784.

During the period under review, average daily census (ADC) ranged from 25 to 31 patients on any given day. The average length of stay (ALOS) declined by 41.6 percent, from 24.3 days in 2005 to 14.2 days in 2010. The occupancy rates over the period ranged from 75.8 percent to 93.9 percent (Table 3).

Table 3:
Lincoln Medical and Mental Health Center: Inpatient Utilization: Major Service Category Psychiatric

Category	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*
Discharges	376	615	520	491	624	784
Average Daily Census	25	28	26	29	30	31
Average Length of Stay	24.3	16.8	17.9	21.4	17.5	14.2
Occupancy	75.8	84.8	78.8	87.9	90.9	93.9
Beds in use/operational	33					

Source: SPARCS 2005- 2010

Summary

Lincoln Medical and Mental Health Center seeks to expand its psychiatric bed capacity in order to respond to the community's need for services. Based on its current growth pattern and assuming a length of stay of 14-18 days, Lincoln would need between 47 to 57 psychiatric beds in order to operate at an 85 percent level. At the current rate, the request for 15 additional beds will provide the hospital with the needed capacity and still leave some room for surge volume.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Proposal

Lincoln Medical and Mental Health Center, a 347-bed acute care hospital, requests approval to construct a new psychiatric inpatient unit and add 15 net new psychiatric beds for a total of 60 psychiatric beds. At this time, while Lincoln is licensed by the DOH for 45 beds they have only been staffing 33 beds and are only certified by the Office of Mental Health (OMH) for 33 beds. Concurrent with this project, Lincoln is working with the OMH to receive approval for a total of 60 beds so that the beds are appropriately dually licensed. This proposal is in response the closure of two New York City hospitals last year and the subsequent increase in emergency department visits for patients presenting with psychiatric diagnoses. According to the hospital, the increase has led to overcrowding in the emergency department and the psychiatric emergency department, which can be alleviated by the addition of psychiatric inpatient beds.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, for new construction and the acquisition of moveable equipment is estimated at $5,380,588 broken down as follows:

New Construction	$3,154,451
Renovation & Demolition	1,289,418
Construction Contingency	7,200
Architect/Engineering Fees	144,000
Moveable Equipment	767,431
Application Fee	2,000
CON Processing Fees	16,088
Total Project Costs	$5,380,588

Project costs are based on an August 1, 2012 construction start date and an eleven month construction period.

The applicant's financing plan appears as follows:

Equity	$18,088
HEAL-NY Phase 18 Grant Funding	5,362,500

Operating Budget

The applicant has submitted an incremental operating budget, in 2012 dollars, for the first and third years of operation, summarized below:

	Year One	Year Three
Revenues	$ 8,886,961	$ 11,211,611
Expenses:		
Operating	$ 5,413,304	$ 5,413,304
Capital	340,290	340,290
Total Expenses	$ 5,753,594	$ 5,753,594
Excess Revenue over Expenses:	$ 3,133,367	$ 5,458,017
Utilization: Discharges	430	537
Cost Per Discharge	$13,380.45	$10,714.33

As shown on BFA Attachment B is a detailed budget indicating incremental cost per discharge will increase in year one as operations are ramped up and decrease in year three based on historical experience.

Incremental utilization by payor source for inpatient services for the first and third years is as follows:

Inpatient

	Year One	Year Three
Commercial Fee-for-Service	.3%	.3%
Commercial Managed Care	.1%	.1%
Medicare Fee-for Service	13.0%	13.9%
Medicare Managed Care	5.0%	3.8%
Medicaid Fee-for-Service	60.0%	62.3%
Medicaid Managed Care	17.0%	16.6%
Private Pay	4.6%	3.0%

Expense and utilization assumptions are based on the hospital's historical experience.

Capability and Feasibility:

Project costs of $5,380,388 will be met with equity of $18,088, and a Heal Grant contract, (Heal 18) in the amount of $5,362,500 will be provided. Presented as BFA Attachment A is a financial summary of HHC, which indicates sufficient resources for the equity contribution. Also, an award letter has been provided by the applicant indicating the award at the stated amount.

The applicant's financial projections indicate that the hospital will achieve excess revenues over expenses of $3,133,367 in year one and $5,458,017 in year three. Revenues are based on current experience and reimbursement methodologies.

As shown on Attachment A, HHC maintained an average positive working capital position and an average negative net asset position during 2010 and 2011, respectively. Also, the hospital incurred an average excess of operating revenues over expenses of ($546,369,000) for the period shown. The applicant explained the reasons for the loss was due to retirement benefit expenses increasing by $518,100,000 more than budgeted, after the New York City Actuary recognized costs previously not recognized. HHC is currently paying the yearly amount owed to the benefit

plan and has changed the plan to a cost sharing plan. Also, as part of a cost reduction initiative, HHC has instituted the following initiatives to improve profitability: Reduce medical supply costs through re-negotiations with vendors; improve billing and coding procedures, and currently instituted a corporate-wide hiring freeze and right sizing to all related hospitals.

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

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Background

The 10th floor was previously an Inpatient Unit, and the existing bedrooms will be renovated with minor partition removal and construction. The existing center core sky lit "atrium" space will be fit-out with the required patient and staff support functions. This proposed unit will have new finish materials installed throughout to create a more attractive appearance for patients, visitors, and staff.

- 10th floor (approx. 12,300 sf renovation)

The 10th floor will consist of approximately 12,300 sf of renovation and will include thirteen semi-private patient rooms and four private patient rooms for a total of 30 beds. Each patient room has its own private toilet room. Support areas for the Psychiatric Unit include a nurse station, offices, medication room, exam room, dining/dayroom, two seclusion treatment rooms, occupational therapy room, group therapy room, quiet activity room, clean workroom, soiled workroom, staff lounge, staff toilet rooms, laundry room, and shower rooms.

Environmental Review:

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

Recommendation

From an architectural perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary, New York City Health and Hospitals Corporation
BFA Attachment B	Summary Detailed Budget Analysis
BHFP Attachment	Map

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION
(A Component Unit of the City of New York)

Balance Sheets

June 30, 2011 and 2010

(In thousands)

Assets	2011	2010
Current assets:		
Cash and cash equivalents	$ 901,241	543,114
U.S. government securities and other investments	68,518	98,932
Patient accounts receivable, net	450,258	486,465
Premiums receivable	58,006	110,815
Estimated third-party payor settlements, net	475,640	1,193,550
Estimated pools receivable, net	509,675	—
Grants receivable	76,742	60,877
Supplies	29,765	30,423
Assets restricted as to use and required for current liabilities	51,825	55,405
Other current assets	20,209	27,362
Total current assets	2,641,879	2,606,943
Assets restricted as to use, net of current portion	371,308	178,717
U.S. government securities and other investments	45,221	13,990
Capital assets, net	2,874,966	2,810,720
Deferred financing costs, net	11,379	14,744
Total assets	$ 5,944,753	5,625,114
Liabilities and Net Assets (Deficit)		
Current liabilities:		
Current installments of long-term debt	$ 56,996	61,607
Accrued salaries, fringe benefits, and payroll taxes	751,026	656,306
Accounts payable and accrued expenses	426,757	400,231
Estimated pools payable, net	—	191,500
Due to City of New York, net	207,374	161,857
Current portion of postemployment benefits obligation, other than pension	94,400	93,000
Total current liabilities	1,536,553	1,564,501
Long-term debt, net of current installments	1,039,664	901,352
Postemployment benefits obligation, other than pension, net of current portion	4,218,416	3,688,635
Total liabilities	6,794,633	6,154,488
Commitments and contingencies		
Net assets (deficit):		
Invested in capital assets, net of related debt	1,975,015	1,871,925
Restricted:		
For debt service	156,332	146,430
Expendable for specific operating activities	8,719	9,765
Nonexpendable permanent endowments	928	928
For statutory reserve requirements	60,448	52,835
Unrestricted	(3,051,322)	(2,611,257)
Total net assets (deficit)	(849,880)	(529,374)
	$ 5,944,753	5,625,114

BFA ATTACHMENT A CONT.

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION
(A Component Unit of the City of New York)

Statements of Revenues, Expenses, and Changes in Net Assets (Deficit)

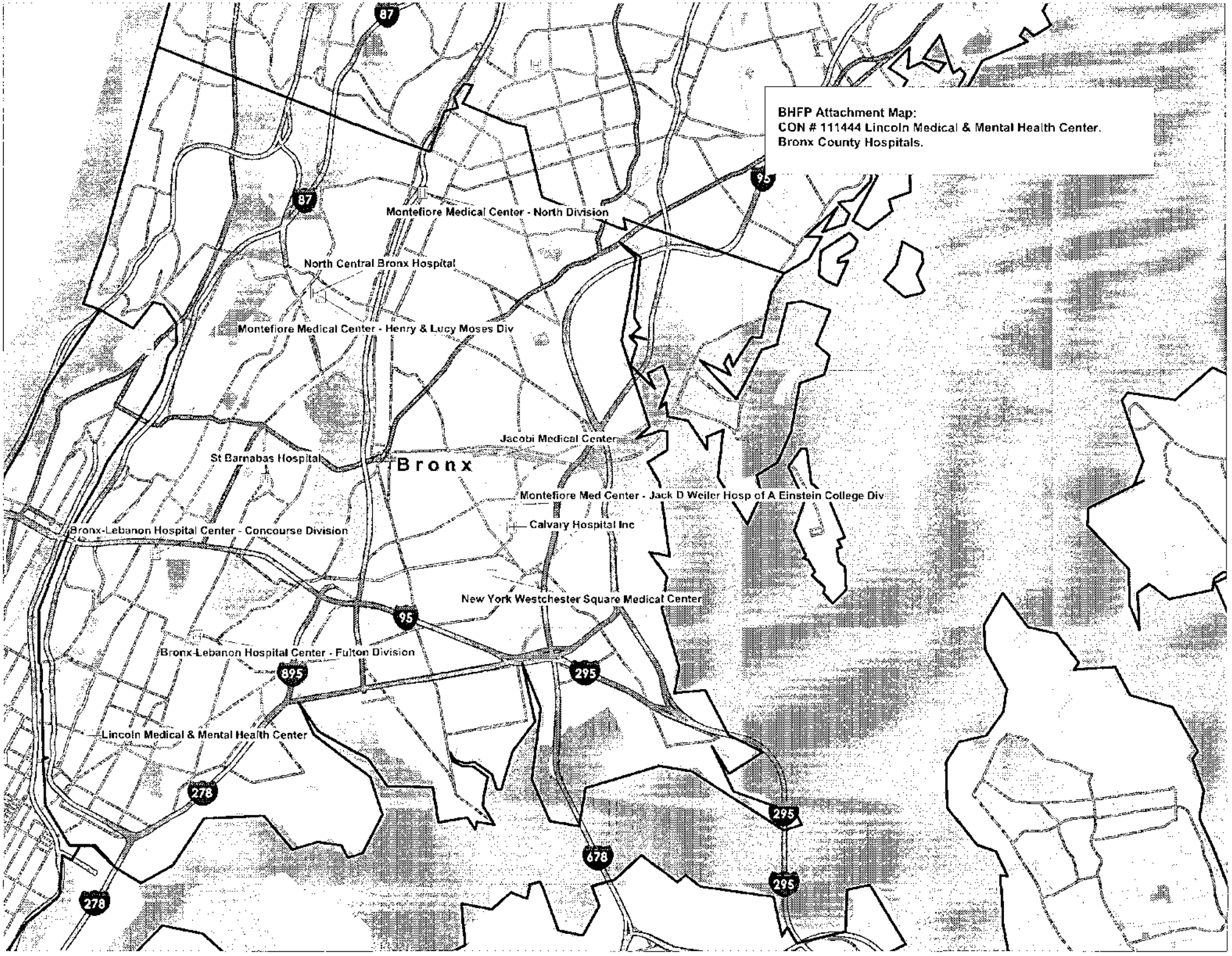
Years ended June 30, 2011 and 2010

(In thousands)

	2011	2010
Operating revenues:		
Net patient service revenue	$ 5,315,360	4,778,845
Appropriations from City of New York, net (	27,593	287,048
Premium revenue	1,279,390	1,107,197
Grants revenue	213,226	220,152
Other revenue	47,519	47,323
Total operating revenues	6,883,088	6,440,565
Operating expenses:		
Personal services	2,583,078	2,611,423
Other than personal services	1,964,049	1,837,224
Fringe benefits and employer payroll taxes	1,044,293	960,706
Postemployment benefits, other than pension	620,601	602,623
Affiliation contracted services	857,467	825,375
Depreciation	256,134	253,419
Total operating expenses	7,325,622	7,090,770
Operating loss	(442,534)	(650,205)
Nonoperating revenues (expenses):		
Investment income	14,069	5,593
Interest expense	(92,868)	(97,573)
Contributions restricted for specific operating activities	557	58
Total nonoperating expenses, net	(78,242)	(91,922)
Loss before other changes in net assets (deficit)	(520,776)	(742,127)
Other changes in net assets:		
Capital contributions funded by City of New York	198,192	258,507
Capital contributions funded by grantors and donors	2,078	3,981
Total other changes in net assets	200,270	262,488
Decrease in net assets	(320,506)	(479,639)
Net assets (deficit) at beginning of year	(529,374)	(49,735)
Net assets (deficit) at end of year	$ (849,880)	(529,374)

BFA Attachment B **Lincoln Medical and Mental Health**
Project 111444

Current Year	Inpatient	Total Expense	Average Cost Discharge
Operating Expenses - Current Year			
Operating	656	$7,109,001	$10,836.89
Capital	656	0	$0.00
Total	656	7,109,001	$10,836.89
Operating Expenses - First Year			
Operating	1,086	$12,522,305	$11,530.67
Capital	1,086	340,290	$313.34
Total	1,086	$12,862,595	$11,844.01
Operating Expenses - Third Year			
Operating	1,193	$12,522,305	$10,496.48
Capital	1,193	340,290	$285.24
Total	1,193	$12,862,595	$10,781.72


BHFP Attachment Map:
CON # 111444 Lincoln Medical & Mental Health Center.
Bronx County Hospitals.
Montefiore Medical Center - North Division
North Central Bronx Hospital
Montefiore Medical Center - Henry & Lucy Moses Div
Jacobi Medical Center
St Barnabas Hospital
Bronx
Montefiore Med Center - Jack D Weiler Hosp of A Einstein College Div
Calvary Hospital Inc
Bronx-Lebanon Hospital Center - Concourse Division
New York Westchester Square Medical Center
Bronx-Lebanon Hospital Center - Fulton Division
Lincoln Medical & Mental Health Center
87
95
895
295
278
678

Public Health and Health Planning Council

Project # 121088-C
Millard Fillmore Suburban Hospital

County: **Erie (Amherst)**
Purpose: **Construction**

Program: **Acute Care Services**
Submitted: **February 17, 2012**

Executive Summary

Description
Millard Fillmore Suburban Hospital, a 261-bed not-for-profit hospital, which is part of Kaleida Health, requests approval to certify a 10-bed level II neonatal intensive care unit (NICU) at Millard Fillmore Suburban Hospital. The project proposes to convert 6 licensed maternity beds at Millard Fillmore Suburban Hospital to NICU beds, transfer 2 critical care beds and 2 rehabilitation beds from DeGraff Memorial Hospital to Millard Fillmore Suburban Hospital, and convert the 4 beds to NICU beds, for a total complement of 10 NICU beds for Millard Fillmore Suburban Hospital.

The project includes renovations to existing space within Millard Fillmore Suburban Hospital (MFSH), which is located at 1540 Maple Road, Amherst, to accommodate the unit. The proposed suite will be located on the second floor of the hospital, which is currently occupied by a portion of the Labor and Delivery Department.

Total project costs are estimated at $2,651,806.

DOH Recommendation
Contingent approval.

Need Summary
This project is consistent with the "hub and spoke" delivery model, which brings services closer to the patient, while maintaining connectivity and access to the Regional Level 2 NICU at Women and Children's Hospital of Buffalo. This project will enhance the continuum of care offered at MFSH and establish needed services in the community.

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 via equity from Kaleida Health.

Budget:	*Revenues:*	*$ 3,341,881*
	Expenses:	*2,699,875*
	Gain/(Loss):	*$ 642,006*

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

Architectural Summary
This project involves the renovation of 5,393 SF for a 10-bed NICU. The NICU will be located adjacent to labor and delivery on the second floor of the existing four-story Millard Fillmore Suburban Hospital.

Recommendations

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

Office of Health Systems Management
Approval contingent upon:

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

Approval conditional upon:

1. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
2. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by September 1, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
June 7, 2012.

Need Analysis

Background

Kaleida Health (Kaleida) is seeking CON approval to certify a 10 bed Level II Neonatal Intensive Care Unit (NICU) at Millard Fillmore Suburban Hospital (MFSH) a 261 bed acute care hospital, located at 1540 Maple Road, Amherst, 14221, in Erie County. When this project is completed there will be no net new beds added to the Kaleida system.

Millard Fillmore Suburban Hospital and DeGraff Memorial Hospital have the following certified beds:

Table 1:
Certified Beds by Service: Millard Fillmore Suburban Hospital and Degraff Memorial Hospital.

	Millard Fillmore Suburban Hospital			*DeGraff Memorial Hospital*		
Bed Category	*Certified Capacity*	*Requested Action*	*Capacity Upon Completion*	*Certified Capacity*	*Requested Action*	*Capacity Upon Completion*
Coronary Care	10		10	10	-2	8
Intensive Care	10		10	0		0
Maternity	34	-6	28	0		0
Medical / Surgical	207		207	40		40
Neonatal Intensive Care Unit	0	+10	10	0		0
Physical Medicine and Rehabilitation	0		0	20	-2	18
Total	*261*	*+4*	*265*	*70*	*-4*	*66*

Millard Fillmore Suburban Hospital Certified Services:

Table 2:
Millard Fillmore Suburban Hospital: Current and Proposed Services.

Service Category	*Current*	*Proposed*
Ambulatory Surgery - Multi Specialty	✓	✓
CT Scanner	✓	✓
Clinic Part Time Services	✓	✓
Clinical Laboratory Service	✓	✓
Coronary Care	✓	✓
Emergency Department	✓	✓
Health Fairs O/P	✓	✓
Intensive Care	✓	✓
Lithotripsy	✓	✓
Magnetic Resonance Imaging	✓	✓
Maternity	✓	✓
Medical/Surgical	✓	✓
Neonatal Intensive Care		✓
Nuclear Medicine - Diagnostic	✓	✓
Pharmaceutical Service	✓	✓
Primary Medical Care O/P	✓	✓
Radiology - Diagnostic	✓	✓
Renal Dialysis - Acute	✓	✓
Therapy - Occupational O/P	✓	✓
Therapy - Speech Language Pathology	✓	✓
Therapy - Speech Language Pathology O/P	✓	✓

State Designations (Millard Fillmore Suburban Hospital):

- Level 1 Perinatal Center; and
- Stroke Center.

In order to create the 10 bed unit, the applicant proposes the following:

- convert 6 of MFSH's maternity beds to 6-NICU beds; and
- convert 2 CCU beds and 2-Physical Medicine & Rehabilitation beds from DeGraff Memorial Hospital to 4 NICU beds.

The proposal will improve newborn care at the Hospital and will eliminate the need to transfer an average of 142 high-risk-neonates per year to a separate facility and lessen the risk of medical complications. The proposal is consistent with Kaleida's mission as it fulfills a community need and improves access to care by bringing services closer to the patient and eliminating unnecessary hospital transfers. The population to be served currently receives care at the facility before being transferred to an appropriate hospital.

Analysis

From 2008 to 2010, Milliard Fillmore Suburban Hospital discharged an averaged of 2,414 healthy newborns and 142 high-risk-neonates a year, respectively. The high-risk-neonates were transferred to other area hospitals with certified neonatal units, thus separating the baby from its mother and family. There are three hospitals in Western New York with certified neonatal beds. Over the last 3 years the occupancy rates at these hospitals were as follows:

- Women and Children's – 90.0 percent, 85.5 percent and 86.9 percent;
- Mercy Hospital -32.0 percent, 26.7 percent and 25.3 percent; and
- Sisters of Charity – 101.0 percent, 107.0 percent and 116.0 percent (Table 3).

Women and Children's Hospital recorded an average of 1,032 high-risk-neonate discharges; this represented about 56 percent of all the high-risk-neonatal discharges recorded in the county. Millard Fillmore Suburban Hospital does not have any neonatal beds; however, the hospital's share of the high-risk-neonatal market for the period was about 8.0 percent (Table 3).

Table 3:
Selected Western New York Hospitals Major Service Category High Risk Neonates Inpatient Utilization

	Discharges			*Average Daily Census*			*Occupancy Based on Current Beds*			*Current Beds*
Hospital	*2008*	*2009*	*2010*	*2008*	*2009*	*2010*	*2008*	*2009*	*2010*	
Women & Children's Hospital	1,128	967	1,002	58	55	56	90.0	85.5	86.9	64
Mercy Hospital	218	178	189	5	4	4	32.0	26.7	25.3	15
Sisters Of Charity Hospital	447	454	492	20	21	23	101.0	107.0	116.0	20
Millard Fillmore Suburban	181	122	123	1	1	1	NA	NA	NA	NA

Source: SPARCS, 2008- 2010

Need for Beds

In order to create the NICU, Kaleida plans to reduce OB/Maternity beds at MFSH by 6 beds and major service medical/surgical beds at DeGraff Memorial Hospital by 4. The accompanying occupancy rates by major service category for the two hospitals were the following:

Hospital/Service	2008	2009	2010
Millard Fillmore (OB/Maternity)	53.8 %	55.0 %	57.4 %
DeGraff – (Medical/Surgical)	71.7 %	68.3 %	64.3 %

The OB/Maternity occupancy rates at MFSH were 18 to 21 percentage points below the desired planning optimum of 75 percent. At DMH, the occupancy rates for major service category medical/surgical were 13 to 21 percentage points below the desired planning optimum of 85.0 percent. Based on current utilization patterns, the conversion of beds at each hospital would result in marginal increases in occupancy rates; however, the affected units' occupancy rates will still be below the desired planning optimums.

From 2008 to 2010, Millard Fillmore Suburban Hospital recorded an averaged of 2,414 births and 142 high-risk-neonatal a year, respectively. Over the last 3 years, a significant number of families chose to utilize the maternity services at Millard Fillmore Suburban Hospital to deliver their babies. However, an average of 142 babies was classified as high-risk-neonates and was transferred to the appropriate hospitals in the area, thereby separating the baby from its mother. To alleviate the unwanted separation, the Hospital proposes to certify a 10-bed NICU. Based on the average number of high-risk-neonatal cases and assuming an average length of stay of 17 – 20 days, MFSH would need 8 – 10 beds to operate at the desired NICU planning optimum rate of 75.0 percent.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Kaleida Health requests approval to certify a 10 bed neonatal intensive care unit at Millard Fillmore Suburban Hospital. The 10 bed NICU will be accomplished through the conversion of 6 maternity beds on the Millard Fillmore license and the conversion and transfer of 2 intensive care unit beds and 2 physical medicine and rehabilitation beds currently at DeGraff Memorial Hospital. Upon completion of the project Millard Fillmore will be licensed for 265 beds, and DeGraff will be licensed for 66 beds.

Compliance with Applicable Codes, Rules and Regulations

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

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $2,651,806, further broken down as follows:

Renovation and Demolition	$1,456,597
Asbestos Abatement or Removal	26,444
Design Contingency	148,304
Construction Contingency	148,304
Architect/Engineering Fees	118,643
Other Fees (Consultant)	20,000
Moveable Equipment	717,020
CON Fee	2,000
Additional Processing Fee	14,494
Total Project Cost	$2,651,806

Project costs are based on a January 1, 2013 construction start date and an eight month construction period.

Project costs will be met via equity from Kaleida Health, of which the applicant is a part of.

Operating Budget

The applicant has submitted an incremental operating budget, in 2012 dollars, for the first and third years, summarized below:

	Year One and Year Three
Revenues	$3,341,881
Expenses:	
Operating	$2,436,578
Capital	263,297
Total Expenses	$2,699,875
Excess of Revenues over Expenses	$642,006
Utilization: (Discharges)	351
Cost Per Discharge	$7,691.95

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

	Year One and Year Three
Medicaid Fee-For-Service	10.25%
Medicaid Managed Care	23.93%
Commercial Fee-For-Service	7.97%
Commercial Managed Care	53.56%
Private Pay	4.29%

Expense and utilization assumptions are based on existing Kaleida Health Women and Children's Hospital of Buffalo NICU expenses and utilization. Utilization assumptions were also gathered through Millard Fillmore Suburban OB/GYN physician interviews.

Capability and Feasibility

Project costs of $2,651,806 will be met via equity from Kaleida Health. Presented as BFA Attachment A are the 2010 certified financial statements and the 2011 internal financial statements of Kaleida Health, which indicates the availability of sufficient funds fro the equity contribution.

The submitted budget indicates an excess of revenues over expenses of $642,006 during the first and third years. Revenues are based on current reimbursement methodologies for NICU services.

As shown on Attachment A, Kaleida Health had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, Kaleida Health incurred an average excess of revenues over expenses of ($647,000) from 2010 through 2011. The applicant has indicated that the reason for the 2011 loss is the result of the following: the area has seen a significant downturn in inpatient volume since the third quarter of 2010 continuing through 2011, and has had continued lower reimbursement rates from Medicaid and Medicare. The applicant has initiated the following improvements to improve operations: productivity improvements, labor cost control, portfolio/service line review and reductions, corporate and fixed cost review and reductions and community benefit analysis.

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

Recommendation

From a financial perspective, approval is recommended.

Architectural Analysis

Background

This project involves the renovation of 5,393 SF for a 10-bed NICU. The NICU will be located adjacent to labor and delivery on the second floor of the existing 4 story Millard Fillmore Suburban Hospital. The construction classification is II(222). The smoke compartment housing the renovated NICU will be sprinklered. The building is partially sprinklered.

The proposed NICU will have 10 NICU beds, 9 will have cubicle curtains and 1 will be located in an isolation room. There will also be a central nurse station, 2 parent/infant rooms, as well as rooms for family consult, lactation support, clean supplies, soiled holding and environmental services. There will be a scrub area at the entrance to the NICU, a nurse's office, multi-purpose room, storage room, and staff lounge, lockers and toilet room.

Environmental Review

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary, Kaleida Health
BHFP Attachment	Map

Public Health and Health Planning Council

Project # 121093-C

St. Cabrini Nursing Home LTHHCP

County: **Westchester (Dobbs Ferry)**
Purpose: **Construction**

Program: **Long Term Home Health Care**
Submitted: **February 21, 2012**

Executive Summary

Description

St. Cabrini Nursing Home LTHHCP, an existing not-for-profit long-term home health care program (LTHHCP), requests approval to purchase and become the operator of the Cabrini Center for Nursing and Rehabilitation Long Term Home Health Care Program. The applicant is operated by Cabrini of Westchester, while Cabrini Center for Nursing and Rehabilitation Long Term Home Health Care Program is operated by Cabrini Center for Nursing and Rehabilitation (CCNR). Both of these programs have sponsorship by the Missionary Sisters of the Sacred Heart of Jesus and share a common President/Chief Executive Officer.

Necessitated by the expiration of CCNR's building lease, CCNR is transferring ownership of its long term home health care program to its affiliate.

DOH Recommendation

Approval.

Need Summary

As this project involves only a change in the ownership of a LTHHCP, no Need recommendation is required.

Program Summary

St. Cabrini Nursing Home LTHHCP is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

The total purchase price of $10 will be met via equity from operations.

Budget:		
	Revenues:	*$ 5,342,044*
	Expenses:	*5,333,707*
	Gain/(Loss):	*$ 8,337*

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

Architectural Summary

This project involves a LTHHCP; 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 conditional upon:

1. The additional capacity approved under CONs #112389-C, #112390-C and #112391-C will continue to be conditioned on the submission of a complete application requesting approval to become enrolled as a Managed Long Term Care Plan or a Care Coordination Organization within 60 days of the approval or contingent approval of this application. In addition, this additional capacity will also continue to expire one year from the date the capacity was approved (March 1, 2012). [CHA]

State Council Recommendation

June 7, 2012

Programmatic Analysis

Background

Cabrini of Westchester d/b/a St. Cabrini Nursing Home Long Term Home Health Care Program, an Article 36 long term home health care program, requests approval to acquire the long term home health care program (LTHHCP) currently operated by Cabrini Center for Nursing and Rehabilitation. These LTHHCPs are operated by Article 28 residential health care facilities – Cabrini of Westchester and Cabrini Center for Nursing and Rehabilitation, respectively. These entities are sibling entities with a common parent, the Missionary Sisters of the Sacred Heart of Jesus. St. Cabrini Nursing Home LTHHCP currently has 249 slots in Westchester County. They are proposing to acquire Cabrini Center for Nursing and Rehabilitation LTHHCP's 110 slots in Kings County, 185 slots in New York County and 110 slots in Queens County, for a total acquisition of 405 slots.

Cabrini Center for Nursing and Rehabilitation submitted and received conditional approval for CONs #112389-C, #112390-C and #112391-C, which were processed administratively. These CONs were approved in response to the Dear Administrator Letter number DHCBS 11-06 which allowed existing LTHHCPs to seek approval for additional capacity conditioned on the submission of an application to become a Managed Long Term Care Plan or a Care Coordination Organization. In addition, this additional capacity was approved for a one year period, which commenced on March 1, 2012.

The St. Cabrini Nursing Home LTHHCP will provide the following services: audiology, home health aide, homemaker, housekeeper, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy, speech language pathology and an AIDS Home Health Care Program.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Transfer Agreement

The applicant has provided an executed transfer agreement for the purchase of the operations, which is summarized below:

Date:	May 3, 2012
Seller:	Cabrini Center for Nursing and Rehabilitation
Purchaser:	St. Cabrini Long Term Home Health Care Program
Purchase Price:	$10
Obligations of Seller:	The Seller will retain all revenues, obligations and other liabilities in connection to services provided to patients generated prior to the effective date of transfer.

The applicant 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 the releasing the transferor of its liability and responsibility.

Operating Budget

The applicant has submitted an operating budget for the LTHHCP, in 2012 dollars, for the first year subsequent to the change in operator, summarized as follows:

LTHHCP

Revenues	$5,342,044
Expenses	5,333,707
Excess of Revenues over Expenses	$8,337

Expenses are further broken down as follows:

	Total Cost	*Visit/Hours*	*Cost Per Visit/Hour*
Nursing	$803,406	4,834	$166.20
Physical Therapy	374,905	3,381	$110.89
Occupational Therapy	24,693	240	$102.89
Medical Social Services	103,844	772	$134.51
Home Health Aide*	899,830	42,672	$21.09
Personal Care*	3,122,717	149,684	$20.86
Nutrition	2,148	21	$102.29
Speech Pathology	2,164	18	$120.22
Total	$5,333,707		

**Hours*

Utilization by payor source for the LTHHCP for the first year subsequent to the change in operator is as follows:

Medicaid Fee-For-Service	90.00%
Medicare Fee-For-Service	10.00%

Expense and utilization assumptions are based on the current operator's historical experience.

Capability and Feasibility

The purchase price of $10 will be met via equity from operations.

Working capital requirements are estimated at $888,951, which appears reasonable based on two months of first year expenses subsequent to the change in operator. The applicant will provide equity via operations to meet the working capital requirement. Presented as BFA Attachment A are the 2010 certified financial statements and the December 31, 2011 internal financial statements of Cabrini of Westchester, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of $8,337 during the first year subsequent to the change in operator. Revenues are based on current reimbursement rates for LTHHCP services.

As shown on Attachment A, Cabrini of Westchester had an average positive working capital position and an average positive net asset position during the period 2010 and through 2011. Also, the entity incurred an operating loss of $2,231,213 in 2010 and achieved an operating gain of $2,923,797 through December 31, 2011. The applicant has indicated that the reason for the 2010 losses were as follows: new Medicaid rates were issued as a result of rebasing, which resulted in a decrease in St. Cabrini's daily Medicaid rate of $25 a day, and the reimbursement methodology for the adult day health care program changed from budget based to cost based resulting in a decline in revenue of approximately $380,000 from previous years. The entity implemented the following steps to improve operations: the facility improved its case mix between 2010 and 2011 by over 10% and continues to focus on revenue enhancement through case mix increases, and the adult day health care program that was performing under 90% occupancy is now averaging occupancy levels of 95%.

Presented as BFA Attachment B are the 2010 certified financial statements and the 2011 internal financial statements of Cabrini Center for Nursing and Rehabilitation. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average net gain of $610,547 during 2010 and 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	2010 Certified financial statements and the December 31, 2011 internal financial statements of Cabrini of Westchester
BFA Attachment B	2010 Certified financial statements and the 2011 internal financial statements of Cabrini Center for Nursing and Rehabilitation.

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

June 7, 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

Acute Care Services – Establish/Construct **Exhibit #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121169 E	NYHB, Inc. (Kings County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112179 B	Amsterdam REC, LLC d/b/a Amsterdam Regional Eye Center (Montgomery County)	Contingent Approval
2.	112379 B	The Surgery Center at Orthopedic Associates, LLC (Dutchess County)	Contingent Approval

Diagnostic and Treatment Center – Establish/Construct **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	101101 B	Street Corner Clinic, Inc. (Kings County)	Contingent Approval

Restated Certificate of Incorporation **Exhibit #9**

	Applicant	E.P.R.C. Recommendation
1.	The Elizabeth Church Manor Nursing Home Corporation	Approval
2.	The James G. Johnston Memorial Nursing Home Corporation	Approval

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

	Applicant	E.P.R.C. Recommendation
1.	NYU Downtown Hospital Chinese Community Partnership for Health Foundation, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #11**

Number	Applicant/Facility	E.P.R.C. Recommendation
1633-L	320 MacDougal Street, Inc. (Bronx, Richamond, Kings, Queens, Nassau and New York Counties)	Contingent Approval
1712-L	Aide and Comfort, Inc. (Nassau, Suffolk, Westchester, Rockland, Queens, New York, Bronx, Kings, and Richmond Counties)	Contingent Approval
1688-L	Alissa Home Care, Inc. (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)	Contingent Approval

1944-L	Always Best Care of NY, LLC (Nassau and Suffolk Counties)	Contingent Approval
1667-L	B & M School of Health Careers, Inc. (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)	Contingent Approval
1623-L	Best Help Home Care Corp. (Kings and Bronx Counties)	Contingent Approval
1844-L	CareGivers by Design, Inc. (Westchester and Rockland Counties)	Contingent Approval
1765-L	Care Providers, Inc. d/b/a Home Helpers #58319 (Queens, Bronx, Kings, Richmond, New York, and Nassau Counties)	Contingent Approval
1919-L	Caring Moments Homecare, Inc. (New York, Nassau, Kings, Bronx, Queens, and Richmond Counties)	Contingent Approval
1587-L	CHDFS, Inc. (Bronx, Rockland, Kings, New York, and Queens Counties)	Contingent Approval
1689-L	Everyday Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
1971-L	Ideal Home Care Services, Inc. (Suffolk, Nassau, New York, Bronx, Queens, Richmond and Kings Counties)	Contingent Approval

1969-L	J & A Hurley, Inc. d/b/a Home Instead Senior Care (Schenectady, Schoharie, Albany and Montgomery Counties)	Contingent Approval
1706-L	K & D Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	Contingent Approval
1923-L	Marks Homecare Agency of NY, Inc. (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)	Contingent Approval
1889-L	PCDI Healthcare and Consultants of Texas, LLC (New York, Kings, Bronx, Queens, Richmond and Nassau Counties)	Contingent Approval
1965-L	Regina G. Yankey d/b/a Orange Homecare and Staffing Agency (Orange, Sullivan, Rockland, Dutchess, Westchester, Bronx, and Putnam Counties)	Contingent Approval
1800-L	Safe Haven Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)	Contingent Approval
1937-L	Queens Homecare Agency, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties)	Contingent Approval
1939-L	Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI (Nassau, Suffolk, and Queens Counties)	Contingent Approval

1789-L	Senior Comfort Solutions, LLC d/b/a Comfort Keepers (Nassau and Suffolk Counties)	Contingent Approval
1973-L	T.A. Daniels Holdings, Inc. d/b/a Senior Helpers (Westchester County)	Contingent Approval
1975-L	Tayler Ashley Group, Inc. d/b/a Senior Helpers (Dutchess, Westchester, Orange, Putnam, Sullivan, and Ulster Counties)	Contingent Approval
1961-L	TriMed Home Care Services, Inc. (Nassau and Suffolk Counties)	Contingent Approval
1922-L	Your Choice Homecare Agency, Inc. (New York, Westchester, Kings, Queens, Bronx and Richmond Counties)	Contingent Approval
2113-L	Steuben County Public Health & Nursing Services (Steuben County)	Contingent Approval
1976-L	Parent Care, LLC (Kings, Richmond, Queens, New York, Bronx, and Nassau Counties)	Contingent Approval
2099-L	SeniorBridge Family Companies (NY), Inc. (See exhibit for counties listed)	Contingent Approval

Public Health and Health Planning Council

Project # 121169-E

NYHB, Inc.

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

Program: **Acute Care Services**
Submitted: **March 30, 2012**

Executive Summary

Description

NYHB, Inc., a proposed not-for-profit Corporation, is seeking approval to become the active parent and co-operator of New York Methodist Hospital (NYMH), a 591-bed acute care hospital and of New York Community Hospital of Brooklyn, Inc. (NYCH), a 134-bed acute care hospital. Both hospitals are not-for-profit corporations located in Brooklyn and are part of the New York Presbyterian Healthcare System.

This application is being submitted in response to Department of Health directives and the New York State Commission on Health Care Facilities in the Twenty First Century, which mandated that a single unified governance structure, with full authority, join the two hospitals to help ensure achievement of the following objectives:

- Enhance the availability of the high quality, comprehensive approach to healthcare within Kings County.
- Promote financial viability of both Hospitals as critical health care providers.
- Minimize duplication of services where feasible.
- Create administrative efficiencies.

NYHB, Inc. will enter into an affiliation agreement with NYMH and NYCH as an active parent and sole corporate member. NYHB, Inc. will have the authority to make decisions for its affiliates as stated in its certificate of incorporation and bylaws. The board of trustees will consist of the CEO from each hospital, the chairman of the Board from each hospital, the senior finance director from each hospital and two senior officers from the New York Presbyterian Health System.

NYHB, Inc. will incur no cost or expense in serving as active parent and will collect no revenue from NYMH or NYCH. There are no costs associated with this project.

DOH Recommendation

Contingent approval.

Need Summary

Approval of this application will give NYHB, Inc. the ability to exercise active powers over NYMH and NYCH, and to gain oversight with respect to the affiliated entities' day-to-day- operations. Upon completion of the transaction, the two facilities will continue to operate at the total bed capacities currently listed on each hospital's operating certificate.

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

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 is for Establishment action only; therefore, no Architectural review is required.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed Affiliation Agreement acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a fully authorized, executed, dated and revised Certificate of Amendment to the Certificate of Incorporation of NYHB, Inc. (NYHB), which must be acceptable to the Department. [CSL]
3. Submission of a photocopy of a fully authorized, executed, dated and revised Bylaws of NYHB, which must be acceptable to the Department. [CSL]
4. Submission of a photocopy of a fully authorized, executed, dated, and revised Certificate of Amendment to the Certificate of Incorporation of The New York Methodist Hospital (NYMH), which must be acceptable to the Department. [CSL]
5. Submission of a photocopy of fully authorized, executed, dated and revised Bylaws of NYMH, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of a fully authorized, executed, dated and revised Certificate of Amendment to the Certificate of Incorporation of New York Community Hospital of Brooklyn (NYCHB), which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of fully authorized, executed, dated and revised Bylaws of NYCHB, which must be acceptable to the Department. [CSL]

Council Action Date

June 7, 2012.

Need Analysis

Background

New York Methodist Hospital (NYMH) is a 591-bed acute care hospital located at 506 Sixth Street, Brooklyn, Kings County and New York Community Hospital of Brooklyn (NYCHB) is a 134-bed acute care hospital located at 2525 Kings Highway Brooklyn, Kings County. These facilities are seeking CON approval to establish NYHB, Inc. as their active parent and co-operator. When this CON is completed, there will be no changes in beds or services at either facility.

New York Methodist Hospital and New York Community Hospital of Brooklyn have the following certified beds and services:

Table 1:
Certified Beds by Service: New York Methodist Hospital and New York Community Hospital

Bed Category	*New York Methodist Hospital*	*New York Community Hospital*
Coronary Care	10	
Intensive Care	28	7
Maternity	50	
Medical / Surgical	385	127
Neonatal Intensive Care	18	
Neonatal Intermediate Care	6	
Pediatric	15	
Pediatric ICU	4	
Physical Medicine and Rehabilitation	25	
Psychiatric	50	
Total	*591*	*134*

** Source: Health Facilities Information System (HFIS), April 2012.*

Table 2:
Certified Services: New York Methodist Hospital and New York Community Hospital

Service	*NY Methodist Hospital*	*NY Community Hospital*
Ambulatory Surgery - Multi Specialty	✓	✓
Audiology O/P	✓	
CT Scanner	✓	✓
Cardiac Catheterization - Adult Diagnostic	✓	
Cardiac Catheterization - Electrophysiology (EP)	✓	
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)	✓	
Cardiac Surgery - Adult	✓	
Certified Mental Health Services O/P	✓	
Clinic Part Time Services	✓	
Clinical Laboratory	✓	
Coronary Care	✓	✓
Dental O/P	✓	
Emergency Department	✓	✓
Family Planning O/P	✓	
Health Fairs O/P	✓	
Intensive Care	✓	✓
Linear Accelerator	✓	
Lithotripsy	✓	
Magnetic Resonance Imaging	✓	
Maternity	✓	
Medical Social Services	✓	✓
Medical/Surgical	✓	✓
Neonatal Intensive Care	✓	
Neonatal Intermediate Care	✓	

Table 2:
Certified Services: New York Methodist Hospital and New York Community Hospital

Service	*NY Methodist Hospital*	*NY Community Hospital*
Nuclear Medicine - Diagnostic	✓	✓
Nuclear Medicine - Therapeutic	✓	
Nutritional O/P	✓	
Pediatric	✓	
Pediatric Intensive Care	✓	
Pediatric O/P	✓	
Pharmaceutical Service	✓	✓
Physical Medical Rehabilitation	✓	
Physical Medicine and Rehabilitation O/P	✓	
Prenatal O/P	✓	
Primary Medical Care O/P	✓	
Psychiatric	✓	
Psychology O/P	✓	
Radiology - Diagnostic	✓	✓
Radiology-Therapeutic	✓	
Renal Dialysis - Acute	✓	✓
Respiratory Care	✓	
Therapy - Occupational O/P	✓	
Therapy - Physical	✓	
Therapy - Speech Language Pathology	✓	

** Source: Health Facilities Information System (HFIS), April 2012.*

New York Methodist Hospital and New York Community Hospital of Brooklyn are members of the New York Presbyterian Healthcare System. New York Methodist Hospital is authorized to operate three (3) hospital extension clinics, providing care such as Certified Mental Health Services O/P, Occupational O/P and Physical O/P, Pediatric O/P and Primary Medical Care O/P.

The Hospitals have the following New York State Designations:

NYMH:

- Level 3 Perinatal Center; and
- Stroke Center.

NYCHB:

- Stroke Center.

Analysis

The majority of NYMH and NYCHB patients are residents of Kings County. The 2010 Census lists the population of Kings County at 2,504,700, a 1.6 percent increase from 2000.

Displayed in Table 3 below are both hospitals' inpatient discharges and occupancy rates. As shown below, between 2006 and 2007, total inpatient discharges at NYCHB fluctuated between 6,408 and 6,322 and then increased to 7,161 and 7,426 in 2008 and 2009, respectively. In 2010, total inpatient discharges at NYCHB were 7,142. During the period under review, these patients generated total occupancy rates that ranged from 86.9 percent to 93.1 percent.

NYMH has certified beds in most of the major service categories. Over the last five years, these beds were occupied at and/or above the desired planning optimums. New York Methodist Hospital has experienced significant growth in total inpatient discharges. Between 2006 and 2010, discharges increased by 15.9 percent from 32,702 to 37,223. During this period an average of 62 percent of the hospital's total inpatient discharges were allocated to major service category medical. Obstetric and healthy new born discharges were the next most numerous categories. These services accounted for an average of 16.0 percent and 13.0 percent of NYMH discharges, respectively.

Table 3:
New York Community Hospital of Brooklyn and New York Methodist Hospital:
Inpatient Utilization, by Major Service Category

	Discharges					Occupancy Based on Current Beds					Current
Service/Hospital	*2006*	*2007*	*2008*	*2009*	*2010*	*2006*	*2007*	*2008*	*2009*	*2010*	*Beds*
New York Community Hospital Of Brooklyn											
Medical/Surgical	6,364	6,249	7,063	7,336	7,048	86.5	86.9	92.5	91.9	89.6	134
Obstetric	0	1	1	0	2	0.0	0.0	0.0	0.0	0.0	0
General Psychiatric	17	29	43	62	46	0.0	0.0	0.0	0.0	0.0	0
Chemical Dependency	27	43	54	28	46	0.0	0.0	0.0	0.0	0.0	0
Total	*6,408*	*6,322*	*7,161*	*7,426*	*7,142*	*86.9*	*87.7*	*93.1*	*92.9*	*90.4*	*134*
New York Methodist Hospital											
Medical/Surgical	20,266	21,777	21,217	22,455	23,542	78.4	87.3	80.7	79.7	83.2	448
Pediatric	1,357	1,391	1,244	1,431	1,478	65.8	62.6	55.3	73.7	81.1	19
Obstetric	5,222	5,565	5,610	5,821	5,811	83.8	91.6	91.0	91.0	90.4	50
General Psychiatric	867	1,052	1,041	1,008	1,014	74.0	90.2	92.8	93.0	84.6	50
Chemical Dependency	67	60	75	69	100	0.00	0.0	0.0	0.0	0.0	0
High Risk Neonates	781	869	711	684	702	102.9	109.2	104.2	95.8	100.4	24
Subtotal	28,560	30,714	29,898	31,468	32,647	79.2	88.2	82.9	82.4	84.7	591
Healthy Newborns	4,142	4,729	4,498	4,622	4,576						
Grand Total	*32,702*	*35,443*	*34,396*	*36,090*	*37,223*						

**Source: SPARCS 2006- 2010.*

Both hospitals have active Emergency Department (ED). In 2006, NYCHB recorded 14,644 total ED visits. By 2010 visits increased by 13.0 percent, to 16,508. The percentage of NYCHB's ED visits resulting in an inpatient admission ranged from 33.0 percent to 42.0 percent. During the same period, NYMH total Emergency Department visits ranged from 65,300 to 87,700. Of these, an average of 25.0 percent were admitted as inpatients (Table 4).

NYMH also performed a sizable number of ambulatory surgery cases over the last five years, averaging about 17,800 ambulatory surgery procedures. At NYCHB, ambulatory surgery procedures increased almost threefold from 1,740 in 2006 to 4,836 in 2010.

New York Methodist Hospital also provides general clinic services at its facilities. General clinic visits increased by 24.5 percent from 55,719 in 2006 to 69,399 in 2010 (Table 4).

Table 4:
Emergency Department (ED), Ambulatory Surgery (AS) and Clinic Statistics

Year/Hospital	*Total ED Visits*	*% of ED Visits Resulting in Inpatient Admission*	*AS Procedures*	*Clinic Visits*
New York Community Hospital - Brooklyn				
2006	14,644	35.4	1,740	
2007	15,400	39.7	1,980	
2008	16,688	41.8	3,771	
2009	18,073	40.3	4,384	
2010	16,508	33.1	4,836	
New York Methodist Hospital				
2006	65,295	25.3	18,242	55,719
2007	65,771	27.3	17,971	49,281
2008	73,787	25.9	18,200	41,473
2009	79,285	30.1	16,523	50,416
2010	87,661	29.0	18,039	69,399

**Source: Institutional Cost Reports, 2006 – 2010*

Conclusion

New York Methodist Hospital and New York Community Hospital of Brooklyn seek CON approval to establish NYHB, Inc. as their active parent and co-operator. The two facilities provide a considerable amount of inpatient, outpatient and emergency department services to the residents of Kings County. As the active parent and co-operator, NYHB will have the ability to exercise active powers over the Hospitals and to gain oversight with respect to the affiliated entities' day-to-day- operations.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Formation of NYHB, Inc., as the active parent of New York Methodist Hospital (NYMH) and New York Community Hospital of Brooklyn (NYCH).

NYMH is an existing, voluntary, not-for-profit hospital. NYMH is a membership corporation, whose members are selected by New York-Presbyterian Healthcare System, Inc., which is a tax-exempt organization whose members are selected by New York-Presbyterian Foundation, Inc.

NYCH is an existing, voluntary, not-for-profit hospital. NYCH is also a member of the New-York Presbyterian Health Care System, Inc.

Character and Competence

The proposed directors of NYHB, Inc. are:

Individual	*Current Position*
John E. Carrington	Chairman, Board of Trustees, New York Methodist Hospital
George Weinberger	Chairman, Board of Trustees, New York Community Hospital of Brooklyn
Mark J. Mundy	President/CEO, New York Methodist Hospital
Lin H. Mo	President/CEO, New York Community Hospital of Brooklyn
Edward Zaidberg	Senior Vice President for Finance, New York Methodist Hospital
Leonardo Tamburello	Director of Finance/Divisional CFO, New York Community Hospital of Brooklyn
Wayne M. Osten	Senior Vice President and Director, The New York-Presbyterian Healthcare System
Laurence J. Berger	Vice President and Chief Administrative Officer, The New York-Presbyterian Healthcare System

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 Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion 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.

New York Hospital of Queens was fined $6,000 in 2005 based on a NYS peer review organization survey to evaluate compliance with resident working hour regulation. Deficiencies in the areas of surgery and internal medicine were identified in multiple surveys.

New York Hospital of Queens was fined $12,000 in 2004 based on the results of a resident working hours survey conducted by the NYS peer review organization. Repeat deficiencies were identified in surgery where residents worked longer than the allowed 24 hour shift and in quality assurance.

New York Methodist Hospital was fined $6,000 in 2007 based on an investigation of care rendered to a newborn who was operated on for inguinal hernia. Two days later when serious symptoms developed, there was a delay in their recognition and further delay because the pediatric physician was not a full-time employee. These delays contributed to the death.

New York Community Hospital of Brooklyn, Inc., was fined $12,000 in 2006 Based on the investigation of an occurrence involving radiology and wrong sided surgery. A patient presented with shortness of breath and chest pain. An x-ray was taken and interpreted as left pleural effusion. The left side was drained, biopsied and a chest tube inserted. When findings of tests were negative, the x-ray was reread and a right sided effusion was noted. Surgery was completed on the correct side.

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.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Background

Based on review of the 2010 certified and 2011 draft financial statements of the two Article 28 entities, NYMH and NYCH have maintained positive working capital, net assets positions and have maintained positive net income. Presented as BFA Attachments B through F are the financial summaries for each facility.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary of New York Methodist Hospital, 2010-2011
BFA Attachment C	Financial Summary of New York Community Hospital of Brooklyn, 2009-2010
BFA Attachment D	Financial Summary of New York Community Hospital of Brooklyn, draft 2011

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 7th day of June, 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 NYHB, Inc. as an active parent over New York Methodist Hospital and New York Community Hospital of Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
121169 E	NYHB, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed Affiliation Agreement acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a fully authorized, executed, dated and revised Certificate of Amendment to the Certificate of Incorporation of NYHB, Inc. (NYHB), which must be acceptable to the Department. [CSL]
3. Submission of a photocopy of a fully authorized, executed, dated and revised Bylaws of NYHB, which must be acceptable to the Department. [CSL]
4. Submission of a photocopy of a fully authorized, executed, dated, and revised Certificate of Amendment to the Certificate of Incorporation of The New York Methodist Hospital (NYMH), which must be acceptable to the Department. [CSL]
5. Submission of a photocopy of fully authorized, executed, dated and revised Bylaws of NYMH, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of a fully authorized, executed, dated and revised Certificate of Amendment to the Certificate of Incorporation of New York Community Hospital of Brooklyn (NYCHB), which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of fully authorized, executed, dated and revised Bylaws of NYCHB, which must be acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

Public Health and Health Planning Council

Project # 112179-B

Amsterdam REC, LLC
d/b/a Amsterdam Regional Eye Center

County: **Montgomery (Amsterdam)** ***Program:*** **Ambulatory Surgery Center**
Purpose: **Establishment and Construction** ***Submitted:*** **September 22, 2011**

Executive Summary

Description
Amsterdam REC, LLC d/b/a Amsterdam Regional Eye Center (Amsterdam REC), formed to pursue this CON application, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of ophthalmology. The FASC will occupy leased space in a to-be-built single-tenant building, located at 102 Holland Circle Drive, Amsterdam.

The sole proposed member of Amsterdam REC, LLC is David M. Kwiat, M.D., a board-certified ophthalmologist with a private practice adjacent to the proposed FASC. The applicant states the proposed FASC will help in recruiting a new eye surgeon to the Amsterdam area, enhance the quality of care to the patient, and provide operating efficiencies to Dr. Kwiat's current practice.

Amsterdam REC states they will seek full accreditation from the Accreditation Association for Ambulatory Health Care (AAAHC). They will also seek Medicare Certification.

In response to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area, objections were received from Nathan Littauer Hospital. The Department does not find the comments submitted sufficient to warrant reversal or modification of the recommendation for five-year limited life approval.

Total project costs are estimated at $813,338.

DOH Recommendation
Contingent approval for a five-year limited life.

Need Summary
Amsterdam Regional Eye Center proposes to operate a single-specialty ophthalmology ambulatory surgery center in Amsterdam with one procedure room. The Center expects to perform 826 procedures in the first year of operation and improve access to ophthalmology surgical procedures in the Amsterdam service area.

Program Summary
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary
Project costs will be met via $187,038 in equity from the sole member, $206,300 from an equipment loan (5 yrs. @ 6%), and a loan of $420,000 for the project's balance (15 yrs. @ 6%). First Niagara Bank has provided a letter of interest for the loans.

Budget:		
	Revenues:	*$ 569,811*
	Expenses:	*431,026*
	Gain/(Loss):	*$ 138,785*

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

Architectural Summary
Amsterdam REC will lease 3,187 square feet of space in a to-be-built single tenant building, which will consist of one operating room, four flexible pre-operating/post-operating bays, and a laser/exam/discharge room, along with space for support functions. Amsterdam REC will perform ophthalmology procedures, including cataract surgery, laser surgery, oculoplastics, corneal transplants and glaucoma surgery for the patients in Amsterdam and the surrounding Montgomery County.

Recommendations

Health Systems Agency
There will be no HSA review 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 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 procedure;
    - 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 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 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 to pay. [RNR]
4. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and if it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a project loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an equipment loan commitment that is acceptable to the Department of Health. [BFA]
8. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

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

Council Action Date
June 7, 2012.

Need Analysis

Background

Amsterdam REC, LLC d/b/a Amsterdam Regional Eye Center requests approval to establish and construct a single-specialty ophthalmology ambulatory surgery center, at 102 Holland Circle Drive, Amsterdam. The Center's service area will include Montgomery, Fulton, Herkimer and Otsego counties. Approximately 45% of Dr. Kwiat's patients reside in the City of Amsterdam, 12010 zip code. The City of Amsterdam and parts of Fulton, Herkimer and Otsego Counties are designated as Medically Underserved Areas and Health Professional Shortage Areas (HPSA).

Utilization by Type of Procedure:

Code	**Description**	**Volume**
15823	Revision of Upper Eyelid	25
65855	SLT	5
66761	Iridotomy/Iridectomy	56
66821	Yag	230
66982	Extracapsular Cataract Removal	175
66984	Remove Cataract, Insert Lens	309
67904	Repair Eyelid Defect	26
	Total	*826*

Based on current experience, Dr. Kwiat projects 826 procedures in the first year of operation and 877 procedures in the third year of operation.

Existing Freestanding Ambulatory Surgery Center:

Facility	*Town*	*Volume*
Cataract Care ASC	Johnstown	648

On August 31, 2011, Nathan Littauer Hospital was approved by the Department to purchase the Cataract Care ASC and operate it as a multi-specialty ambulatory surgery hospital extension clinic, to be known as the Nathan Littauer Hospital Johnstown Surgery Center.

It is expected that the proposed Amsterdam Eye Surgery Center will benefit community residents by reducing waiting times, improving coordination of care between the medical practice and the center, and by providing a geographically convenient location.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Background

The applicant proposes to establish a diagnostic and treatment center that will also be certified as an ambulatory surgery center.

Proposed Operator	**Amsterdam REC**
Operator Type	LLC
Doing Business As	Amsterdam Regional Eye Center
Site Address	102 Holland Circle Drive, Amsterdam

Surgical Specialties	Ophthalmology
Operating Rooms	0
Procedure Rooms	1
Hours of Operation	Tuesdays and Thursdays from 7:00 am to 3:00 pm
Staffing (1st Year / 3rd Year)	1.6 FTEs / 1.6 FTEs
Medical Director(s)	David M. Kwiat
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by St. Mary's Hospital
Distance	2.75 miles and 5 minutes
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Integration with Community Resources

The facility states that, while they cannot ensure that patients have access to primary care services, most patients receiving services at the center will have been referred by a primary care physician. Currently the sole member, Dr. Kwiat, draws nearly 45% of his patients from the city of Amsterdam, which is a medically underserved area. His current payer mix includes a significant volume of Medicaid clients, and Dr. Kwiat plans to continue to provide services to the underserved communities.

The facility intends to use an electronic medical record system and will participate in HIXNY, the Regional Health Information Network servicing the region. Additionally, while the applicant is not aware of the existence of any newer service delivery models, such as Accountable Care Organizations (ACOs), in the proposed service area, he is interested in participating should the opportunity arise.

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 sole member of the LLC is David M. Kwiat, M.D., who is a board certified ophthalmologist with a practice in the area.

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, Dr. Kwiat disclosed no associated facilities.

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

Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site; the terms are summarized below:

Dated:	August 1, 2011
Premises:	3,187 gross square feet located at 102 Holland Circle Drive, Amsterdam, New York
Landlord:	K&P Acquisitions, LLC
Lessee:	Amsterdam REC, LLC d/b/a Amsterdam Regional Eye Center
Term:	10 years at $56,000 ($17.57 sq. ft.) 1st renewal 5-year term at $70,000 ($21.96 sq. ft.) 2nd renewal 5-year term at $75,600 ($23.72 sq. ft.)
Provisions:	Triple Net

The applicant states the lease is a non-arm's length arrangement. Sole member of the lessee (Amsterdam REC, LLC) is the sole owner of the landlord (K&P Acquisitions, LLC). Realtor letters have been provided attesting to the rental rate being of fair market value.

Total Project Costs and Financing

Total project costs for new construction and acquisition of moveable equipment is estimated at $813,338, broken down as follows:

New Construction	$440,000
Design Contingency	44,000
Construction Contingency	22,000
Planning Consultant Fees	8,000
Architect/Engineering Fees	44,000
Other Fees	30,000
Movable Equipment	203,800
Telecommunications	2,500
Interim Interest Expense	12,600
CON Application Fee	2,000
CON Processing Fee	4,438
Total Project Cost	$813,338

Project costs are based on a August 1, 2012 start date with a four month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	$187,038
Equipment Loan (5-year term, 6%)	206,300
Project Loan (15-year term, 6%)	420,000
Total	$813,338

A letter of interest has been provided from First Niagara Bank.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2012 dollars, as summarized below:

	Year One	Year Three
Revenues	$537,640	$569,811
Expenses:		
Operating	$277,340	$292,141

Capital	146,578	138,885
Total Expenses	$423,918	$431,026
Net Income or (Loss)	$113,722	$138,785
Utilization: (procedures)	826	877
Cost Per Procedure	$513.22	$491.48

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

Medicaid Fee-For-Service	10.0%
Medicaid Managed Care	12.0%
Medicare Fee-For-Service	39.0%
Commercial Manage Care	35.0%
Private Pay	2.0%
Charity	2.0%

Utilization and expense assumptions were based on the applicant's experience in operating an ophthalmology practice and serving on the medical staff of an Article 28 FASC, along with input from a consultant. David M. Kwiat, M.D. has submitted a physician's referral letter in support of the utilization projections.

The applicant points out that in early 2010, Dr. Kwiat provided a non-binding physician referral letter to Nathan Littauer Hospital Johnstown Surgery Center, (CON 101112 contingently approved on June 11, 2011 by the Public Health and Health Planning Council). Subsequently, Dr. Kwiat has determined that splitting his surgical volume between two sites would not be optimal for either his practice or his patients, and therefore will not be referring patients to Nathan Littauer Hospital Johnstown Surgery Center. The applicant projects the proposed facility's breakeven point to be around 572 procedures, which is approximately 70% of the first year's utilization.

Capability and Feasibility

The $813,338 in total project cost will be satisfied as follows; the sole proposed member will contribute $187,038 from his personal resources and enter into two loan agreements with First Niagara Bank at the above stated terms. The first loan of $420,000 is for the building's leasehold improvements and the second loan of $206,300 is for the purchases of movable equipment.

Working capital requirements are estimated at $71,837, which appears reasonable based on two months of third year expenses. A little over half of the working capital or $36,837 will be contributed by the sole member, with the remaining $35,000 borrowed from First Niagara Bank for five years at a 6% fixed rate of interest. Presented as BFA Attachment A, is the sole member's statement of personal net worth, which indicates the ability to meet both the equity and working capital requirements. Presented as BFA Attachment B is Amsterdam REC, LLC pro-forma balance sheet that shows operations will start off with $223,875 in positive equity.

Amsterdam REC projects an operating excess of $113,722 and $138,785 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on estimates. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Review Summary

The proposed new facility will consist of 3,187 SF and will include a lobby, waiting room with wheelchair storage, reception area, patient registration, public toilet, telephone, drinking fountain, consultation discharge area, break room and office. A covered entrance will be provided for patients at the main entrance to the building.

The surgical suite will consist of a patient changing room, 2 pre-op cubicles, 2 post-op cubicles, nurse station, nourishment area, drug distribution, operating room, patient toilet, staff changing room, clean assembly workroom, sterile supply room, surgical equipment room, sterile corridor janitor closet, soiled holding room, clean holding room, stretcher and wheelchair storage. Support areas will include a janitor's closet, medical gases room and mechanical room.

The facility will be provided with all Code required mechanical and electrical systems including safety systems such as fire alarm and sprinklers throughout the entire building. A new generator will be provided to back-up the operating rooms and to provide other emergency power requirements including emergency lighting, exit signs and electrical outlets to meet program needs. The HVAC system will be capable of providing code required air changes and air pressure differentials.

A new parking lot with a drive lane for the drive-under canopy will also be provided with ADA compliant parking spaces.

Environmental Review

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement for the Proposed Member of Amsterdam REC, LLC d/b/a Amsterdam Regional Eye Center
BFA Attachment B	Pro-forma Balance Sheet of Amsterdam REC, LLC d/b/a Amsterdam Regional Eye Center
BFA Attachment C	Establishment Checklist for Ambulatory Care Sites
BHFP Attachment	Map

Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: St. Mary's Hospital
427 Guy Park Avenue
Amsterdam, NY 12010

No response.

Facility: Nathan Littauer Hospital
99 East State Street
Gloversville, NY 12078

Current OR Use	Surgery Cases		Ambulatory Cases by Applicant Physician	Reserved OR Time for Applicant Physician
	Ambulatory	**Inpatient**		
NA	4,908	722	None	None

Nathan Littauer opposed the application, stating that the proposed ASC would result in a loss of the applicant physician's cases and $1.4 million in associated surgical revenues for the hospital. However, shortly after the hospital voiced its opposition to the application, in January of this year, the applicant ceased performing surgical cases at the hospital. This renders moot the hospital's prediction of a loss of surgical cases and revenues to the proposed ASC. The shared circumstances between the applicant physician and Nathan Littauer that prevailed when the ASC application was submitted and when the Department invited hospitals to opine on it no longer pertain.

The hospital also stated that the current capacity of the operating rooms at the hospital's main site, and that of the three operating rooms at the approved Nathan Littauer Hospital/Johnstown Surgery Center (expected to open shortly) are sufficient to handle the existing surgical volumes of the applicant physician and of any additional surgical cases in the region for some time to come.

In 2009, Nathan Littauer had an operating gain of $2.7 million on revenues of $84.2 million. In 2010, the hospital experienced a gain of $1.6 million on operating revenues of $88.7 million. In 2009, the hospital had a working capital ratio of 2.5. In 2010, the ratio was 3.0. The hospital's total bad debt and charity care in 2009 was $5.6 million, and in 2010, the total came to $6.6 million. The hospital also furnished unaudited information showing a reduction in the hospital's bottom line (excess revenues over expenses) from $2.4 million in 2010 to $1.1 million in 2011, due to cuts in State and Federal reimbursement.

Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the proposed ASC will primarily meet an unmet need because there are no other non-hospital ASC's providing ophthalmology services within 50 miles of Amsterdam, the proposed location of the facility. In addition, a substantial percentage of the facility's patients will be drawn from the City of Amsterdam, which is a medically underserved area, and from contiguous counties, several of which contain medically underserved areas.

- Office-Based Cases

The applicant states that none of the procedures projected for the proposed facility are currently performed in an office setting.

- Staff Recruitment and Retention

The applicant states that employees will be recruited from accredited schools and training programs as well as through advertisements in local newspapers and professional publications. The facility may also hire some of its nursing staff from the applicant physician's medical practice.

OHSM Comment

The objections from one of the two hospitals in the applicant's proposed service area do not provide a sufficient 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 7th day of June, 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.

NUMBER:	FACILITY/APPLICANT:
112179 B	Amsterdam REC, LLC d/b/a Amsterdam Regional 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 procedure;
    - 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 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 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 to pay. [RNR]
4. Submission of the statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and if it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a project loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an equipment loan commitment that is acceptable to the Department of Health. [BFA]
8. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

Public Health and Health Planning Council

Project # 112379-B
The Surgery Center at Orthopedic Associates, LLC

County: **Dutchess (Poughkeepsie)** ***Program:*** **Ambulatory Surgery Center**
Purpose: **Establishment and Construction** ***Submitted:*** **December 30, 2011**

Executive Summary

Description
The Surgery Center at Orthopedic Associates, LLC, a to-be-formed limited liability company, requests approval to establish and construct a multi-specialty freestanding ambulatory surgery center (FASC) to serve the residents of Dutchess County. The Center will be located in leased space at 1910 South Road, Poughkeepsie, and will consist of four operating rooms. The Center will provide plastic surgery and orthopedics.

The proposed members of The Surgery Center at Orthopedic Associates, LLC and their ownership percentages are as follows:

Members	*Interest*
Lawrence Kusior, MD.	6.666%
Frank Lombardo, MD.	6.666%
David DiMarco, MD.	6.666%
Wen Shen, MD.	6.666%
William Barrick, MD.	6.666%
Sasha Rustic, MD.	6.666%
Carl Barbera, MD.	6.666%
Andrew Stewart, MD.	6.666%
Stephen Maurer, MD.	6.666%
Richard Perkins, MD.	6.666%
Russell Tigges, MD.	6.666%
Michael Schweppe, MD.	6.666%
William Colman, MD.	6.666%
Mark Aierstok, MD.	6.666%
Samant Virk, MD.	6.666%

In response to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area, no objections were received.

Total project costs are estimated at $4,584,930.

DOH Recommendation
Contingent approval for a 5-year limited life.

Need Summary
The proposed FASC will offer plastic surgery and orthopedic services. The number of projected procedures is as follows:

Current Year:	0
First Year:	5,528
Third Year:	6,688

Program Summary
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary
Project costs will be met via equity of $458,493 and a bank loan of $4,126,437.

Budget:	Revenues:	$ 8,338,914
	Expenses:	5,368,115
	Gain/(Loss):	$ 2,970,799

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

Architectural Summary
The new outpatient surgical facility is proposed in a one-story existing medical office building. The FASC is requesting approval to occupy 11,627 SF of this existing building, with private medical office spaces at the back of the building.

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 that 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. [RNR]
4. Submission of a statement from the applicant to enter into a collaborative relationship with St. Francis Hospital and Health Center, which includes the prospects of entering into the required transfer and affiliation agreement. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an assumed name, if applicable, acceptable to the Department. [HSP]
7. Submission of an executed lease rental agreement that is acceptable to the Department. [BFA]
8. Submission of a bank loan commitment that is acceptable to the Department. [BFA]
9. Submission of a working capital loan commitment 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 start of construction. [AER]
7. The applicant shall complete construction by 3/1/13 in accordance with 10 NYCRR Section 710.7. If construction is not completed on or before the completion date, this may constitute abandonment of the approval without further action by the Commissioner. [AER]

Council Action Date

June 7, 2012.

Need Analysis

Background

The Surgery Center at Orthopedic Associates, LLC is seeking approval to establish and construct a freestanding multi-specialty ambulatory surgery center, to be located at 1910 South Road, Poughkeepsie, Dutchess County. The center will have 4 operating rooms and 1 procedure room.

Analysis

The primary service area is Dutchess County.

Dutchess County has two freestanding single specialty and two multi-specialty ASCs as follows:

Dutchess County Free-Standing ASCs	*Single Specialty*	*Multi-Specialty*
Central New York Eye Center	Ophthalomology	
Hudson Valley Endoscopic Center	Endoscopy	
Dutchess ASC		Multi-Specialty
Hudson Valley Center at St. Francis		Multi-Specialty

Source: HFIS

The applicant is committed to serving all persons in need of surgical care without regard to a patient's ability to pay or the source of payment. Additionally, the applicant is committed to the development of a formal outreach program directed to members of the local community, including local physicians.

The applicant has submitted an acceptable statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel.

Conclusion

The proposed project will bring existing private practices into the regulatory environment of an Article 28 multi-specialty ambulatory surgery center providing plastic surgery and orthopedic services.

Recommendation

From a need perspective, contingent approval is recommended for a limited life of five years from the date of the issuance of an operating certificate.

Programmatic Analysis

Program Proposal

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

Proposed Operator	**The Surgery Center at Orthopedic Associates**
Operator Type	LLC
Site Address	1910 South Road, Poughkeepsie
Surgical Specialties	Multispecialty including: Plastic Surgery Orthopedics
Operating Rooms	4
Procedure Rooms	1
Initial Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm
Staffing (1st Year / 3rd Year)	20 FTEs / 31 FTEs
Medical Director(s)	Lawrence Kusior
Emergency, In-Patient and Backup Support Services Agreement / Distance	Expected to be provided by St. Francis Hospital 7.6 miles and 9 minutes distance

On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Integration with Community Resources

The center intends to work with St. Francis Hospital to assist patients in need of primary care services. To conduct outreach to underserved communities the center will participate in community health events and local religious institution events.

The center will be utilizing an Electronic Medical Record system and is discussing establishing a mutual network relationship with St. Francis Hospital which includes a desire to integrate in the Regional Health Information Organization and/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. 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:

Name	Interest
Lawrence J. Kusior, MD	6.67%
Frank Lombardo, MD	6.67%
David DiMarco, MD	6.67%
Wen Shen, MD	6.67%
William Barrick, MD	6.67%
Sasha Ristic, MD	6.67%
Carl Barbera, MD	6.67%
Andrew Stewart, MD	6.67%
Stephen Maurer, MD	6.67%
Richard Perkins, MD	6.67%
Russell Tigges, MD	6.67%
Michael Schweppe, MD	6.67%
William Colman, MD	6.67%
Mark Aierstok, MD	6.67%
Samant Virk, MD	6.67%

All the proposed members are practicing physicians. Nine of the members have current ownership interest in an existing free-standing ambulatory surgery center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the applicant 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

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:	11,627 square feet located at 1910 South Road, Poughkeepsie, New York
Lessor:	South Road, LLC
Lessee:	The Surgery Center at Orthopedic Associates, LLC
Term:	10 years
Rental:	Year 1 through 5 - $232,540 annually ($20.00per sq. ft.)
	Year 6 through 10 - $255,794 annually ($22.00 per sq. ft.)
Provisions:	The lessee shall pay for real estate taxes and utilities.

The applicant has indicated that this will be a non-arms length lease arrangement. Letters from licensed real estate agents have been submitted, which support the per square foot rental.

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment for the ambulatory surgery center, is estimated at $4,584,930, broken down as follows:

Renovation and Demolition	$2,810,630
Design Contingency	140,532
Construction Contingency	140,532
Architect/Engineering Fees	195,000
Other Fees (Consultant)	200,000
Moveable Equipment	803,855
Financing Costs	174,335
Interim Interest Expense	92,978
CON Fee	2,000
Additional Processing Fee	25,068
Total Project Cost	$4,584,930

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

The applicant's financing plan appears as follows:

Equity	$458,493
Bank Loan (7.50% for ten years)	4,126,437

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	$6,288,063	$8,338,914
Expenses:		
Operating	$2,970,264	$4,253,677
Capital	1,110,296	1,114,438
Total Expenses	$4,080,560	$5,368,115
Net Income	$2,207,503	$2,970,799
Utilization: (procedures)	5,528	6,080
Cost Per Procedure	$738.16	$882.91

Presented as BFA Attachment C, is a summary of the detailed budget. The applicant has indicated that the cost per procedure increased during the third year due to start up costs, especially staffing, have been minimized the first year to progress on a slow ramp up process and some existing procedures currently requiring hospitalization will be moved out of the hospital and performed in an ambulatory setting, which will require additional staffing.

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

	Year One and Three
Medicaid Fee-For-Service	5.46%
Medicaid Managed Care	10.00%
Medicare Fee-For-Service	39.09%
Commercial Fee-For-Service	20.00%
Commercial Managed Care	20.00%
Self Pay	3.27%
Charity Care	2.18%

Expense assumptions are based on historical data of similar ambulatory surgery centers. Utilization is based upon the surgical volume letters as provided by proposed surgeons who will perform surgeries at the proposed center.

Capability and Feasibility

The applicant will finance $4,126,437 at an interest rate of 7.50% for a ten year term. The remainder, $458,493, will be provided from the proposed members personal resources. The applicant provided a letter of interest.

Working capital requirements are estimated at $894,686, which appears reasonable based on two months of third year expenses. The applicant will finance $447,343 at an interest rate of 7.00% for a five year term. The remainder, $447,343, will be provided via equity from the proposed members personal resources. The applicant has provided an affidavit indicating that they will provide equity that is disproportionate to ownership percentages. Presented as BFA Attachment A, is the personal net worth statement of the proposed members of The Surgery Center of Orthopedic Associates, LLC, which indicates the availability of sufficient funds to meet the equity contributions. Presented as BFA Attachment B is the pro-forma balance sheet of The Surgery at Orthopedic Associates, LLC, which indicates a positive members' equity position of $905,836.

The submitted budget projects a net income of $2,207,503 and $2,970,799 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The applicant is proposing to establish a new freestanding Ambulatory Surgery Center (ASC) with a total of 11,627 SF, within an existing one (1) story medical office building of about 42,000 SF, which is protected by full sprinkler and fire alarm systems. There is a 1 hour fire rated wall separating the ASC from the adjacent business occupancy (private medical offices).

The exterior entrance to the ASC leads into a waiting area with reception and adjacent interview area for privacy, along with some administrative offices and staff lounge. The Pre-Operative area houses six (6) patient bays with exam room, including soiled and clean support spaces also shared with the Post-Operative bays.`

Entering the OR / Semi-restricted suite, there are four (4) "Class C" Operating Rooms with Sub-Sterile spaces for flash sterilization, Male/Female Locker rooms, a Sterile Processing area including Soiled Workroom, Clean Workroom, and Clean Storage room. Ancillary rooms located up a ramp off the loading dock area include a Soiled Holding, Medical Gas, Electrical and Storage rooms.

The Post-Operative/Anesthesia Recovery area has seven (7) patient bays (including 2 Private/Pediatric rooms). There is a Nurse station, soiled holding room, and toilet room in this area along with the ASC Discharge exit for post surgical patient pick-up.

Outstanding Issues:

Facility to develop operational written policy and procedures to be shared with Department of Health Regional Office Staff during future pre-opening reviews to address the following:

Ensure that the flow of clean, sterile, and soiled items along the rear exit corridor (ramp area) is provided to maintain standard infection control practices.

Ensure that access into the semi-restricted OR space from the rear corridor (ramp) area is prevented from unauthorized entry by outside persons (e.g. delivery persons / waste haulers).

Environmental Review:

The Department has deemed this project to be a TYPE II Action and the lead agency shall be the county of Dutchess or the authority having jurisdiction.

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro
BFA Attachment C	Summary of Detailed Budget
BFA Attachment D	Checklist for Ambulatory Care Sites

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: Vassar Brothers Medical Center
45 Reade Place
Poughkeepsie, New York 12601

Facility: Northern Dutchess Hospital
6511 Springbrook Avenue
Rhinebeck, New York 12572

Health Quest, the parent company of these facilities, responded on behalf of the two hospitals. Health Quest stated that the proposed project would not cause an undue hardship for its hospitals nor would it impact their ability to provide community benefits. Health Quest stated that it supported the applicant and its physicians in this endeavor.

Facility: St. Francis Hospital
241 North Road
Poughkeepsie, New York 12601

St. Francis Hospital sent an initial letter opposing the application. However, the hospital sent a letter several weeks later stating that it had re-examined the anticipated utilization of the proposed ASC and concluded that the proposed facility would have minimal to no impact on the hospital's ambulatory surgery cases. The hospital stated that it was withdrawing its opposition to the ASC and supported it as described in the CON application.

Supplemental Information from Applicant

- Need and Source of Cases

The applicant states that the projected volume of the proposed ASC is based on the actual experience of the physicians who have expressed an interest in performing procedures at the proposed facility. The applicant also states that several of the proposed operators of this new ASC are currently operators of another freestanding ASC in the county. A portion of the procedures being performed in that facility would be transferred to the new ASC.

- Office-Based Cases

Based upon a review of the services and CPT codes from the proposed operators, the applicant does not believe that any cases to be performed at the proposed ASC are currently being performed in an office-based setting. The procedures anticipated for the facility have traditionally been performed as ambulatory surgery procedures and do not qualify to be performed in an office-based surgery environment.

- Staff Recruitment and Retention

The proposed operators plan to use existing staff from their current office practice where appropriate and would also seek to attract new employees through a recruitment campaign. To the extent that additional staff is needed, the operators state that they are committed not to actively seek to attract staff from local hospitals.

OHSM Comment

The supportive comments from area hospitals in regard to this application make it unnecessary to reconsider the recommendation for five-year limited life approval based on public need, financial feasibility and operator character and competence.

BFA Attachment B

Pro Forma Balance Sheet

ASSETS	
Cash	$894,686
Moveable Equipment	803,855
Leasehold Improvements	3,781,075
TOTAL ASSETS	$5,479,616
LIABILITIES	
Bank Loan	$4,126,437
Working Capital Loan	447,343
TOTAL LIABILITIES	$4,573,780
NET ASSETS	$905,836

BFA Attachment C

Detailed Budget

YEAR ONE

	Expenses	Procedures	Cost Per Procedure
Operating	$2,970,264	5,528	$537.31
Capital	1,110,296	5,528	200.85
TOTAL EXPENSES	$4,080,560		$738.16

YEAR THREE

	Expenses	Procedures	Cost Per Procedure
Operating	$4,253,677	6,080	$699.62
Capital	1,114,438	6,080	183.29
TOTAL EXPENSES	$5,368,115		$882.91

BFA Attachment D
ESTABLISHMENT CHECKLIST FOR AMBULATORY CARE SITES

APPLICATION: CON# 112379-B The Surgery Center at Orthopedic Associates, LLC

NATURE OF APPLICATION:

_____	PRIMARY CARE
__X_____	SPECIALTY

IF SPECIALTY – TYPE:

AUSPICE:

_____	NON PROFIT
_____X	PROPRIETARY
_____	PUBLIC

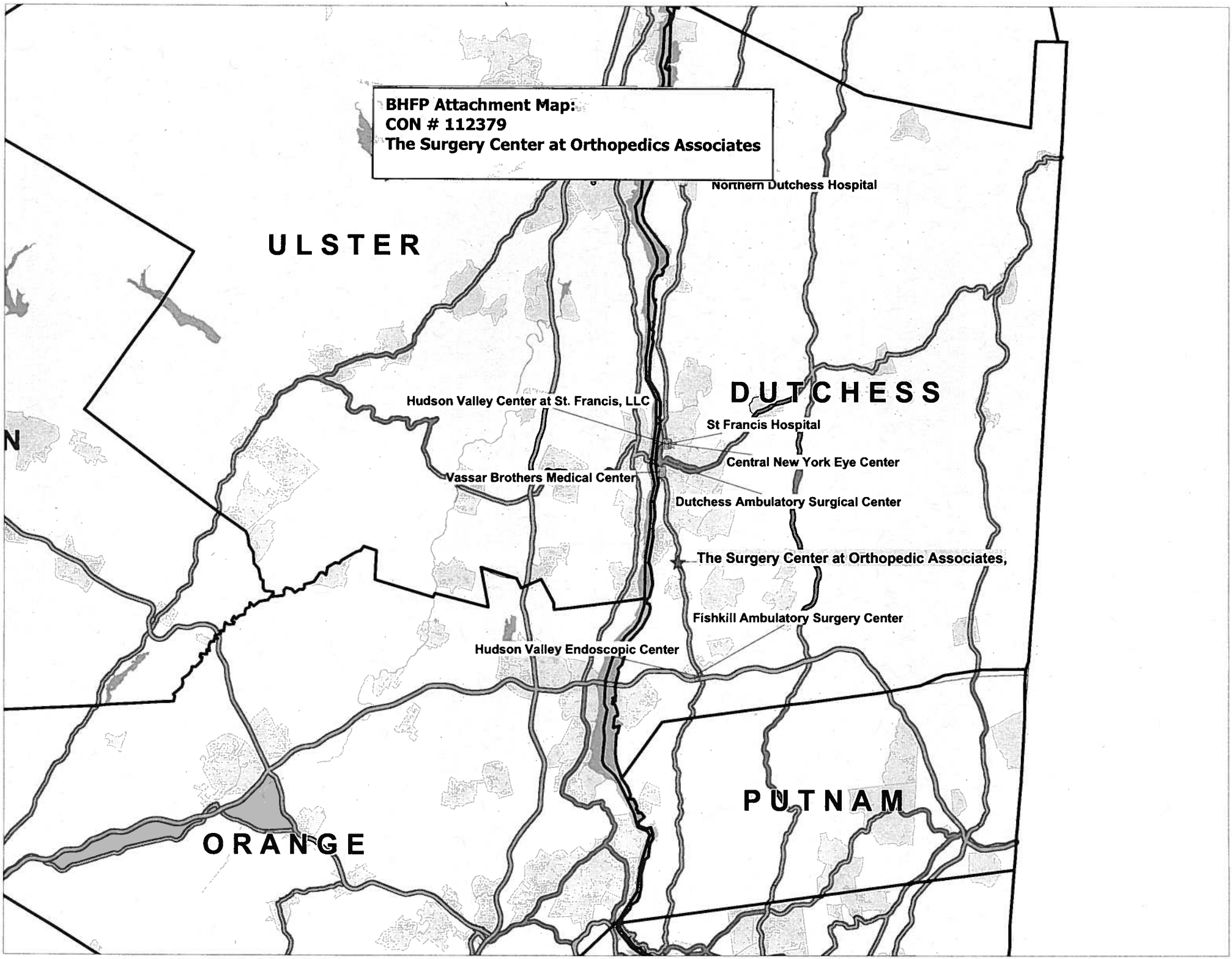
AFFILIATIONS: NA

UNIT COST:

	YEAR ONE	YEAR THREE
OPERATING	$537.31	$699.62
CAPITAL	200.85	183.29
TOTAL	$738.16	$882.91

PAYOR SOURCE:

	YEAR ONE	YEAR THREE
MEDICAID-M/C	10.00%	10.00%
MEDICAID-FFS	5.46%	5.46%
MEDICARE-MC	NA	NA
MEDICARE-FFS	39.09%	39.09%
COMMERCIAL FFS	20.00%	20.00%
COMMERCIAL MC	20.00%	20.00%
SELF-PAY	3.27%	3.27%
CHARITY CARE	2.18%	2.18%


BHFP Attachment Map:
CON # 112379
The Surgery Center at Orthopedics Associates
Northern Dutchess Hospital
ULSTER
DUTCHESS
Hudson Valley Center at St. Francis, LLC
St Francis Hospital
Central New York Eye Center
Vassar Brothers Medical Center
Dutchess Ambulatory Surgical Center
The Surgery Center at Orthopedic Associates,
Fishkill Ambulatory Surgery Center
Hudson Valley Endoscopic Center
PUTNAM
ORANGE

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 7th day of June, 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 to be located at 1910 South Road, Poughkeepsie, 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:
112379 B	The Surgery Center at Orthopedic Associates, 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 that 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. [RNR]
4. Submission of a statement from the applicant to enter into a collaborative relationship with St. Francis Hospital and Health Center, which includes the prospects of entering into the required transfer and affiliation agreement. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an assumed name, if applicable, acceptable to the Department. [HSP]
7. Submission of an executed lease rental agreement that is acceptable to the Department. [BFA]
8. Submission of a bank loan commitment that is acceptable to the Department. [BFA]
9. Submission of a working capital loan commitment 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 start of construction. [AER]
7. The applicant shall complete construction by 3/1/13 in accordance with 10 NYCRR Section 710.7. If construction is not completed on or before the completion date, this may constitute abandonment of the approval 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 # 101101-B

Street Corner Clinic, Inc.

County: **Kings (Brooklyn)** ***Program:*** **Diagnostic and Treatment Center**
Purpose: **Establishment and Construction** ***Submitted:*** **April 7, 2010**

Executive Summary

Description

Mobile Health Partners, Inc., a not-for-profit corporation, seeks approval to establish and construct a diagnostic and treatment center (D&TC) to be called Street Corner Clinic, Inc. upon final approval of this project. The D&TC will consist of a main site and two mobile health vans that will make five stops each at regular locations throughout Brooklyn and Staten Island every week during non-traditional hours of 10:00 am to 11:00 pm, and will serve urban poor, homeless and other marginalized residents of the local communities in these boroughs. Services to be provided include primary medical care, psychology and health education in, but not limited to, HIV/AIDS, sexually transmitted diseases, substance abuse and mental health.

The main administrative office will be located in leased space on the first floor of 502 Bergen Street, Brooklyn. When the mobile vans are not in use, one will be parked at the main Brooklyn AIDS Task Force site, and the other will be parked in leased space in a lot located at 312 Port Richard Avenue, Staten Island.

Mobile Health Partners, Inc. was recently formed for the purpose of applying for Article 28 licensure to operate a mobile D&TC. The proposed members are as follows:

Member	*Interest*
Project Hospitality	33.33%
Brooklyn AIDS Task Force	33.34%
Community Health Action of Staten Island, Inc.	33.33%

Total project costs are estimated at $1,093,705.

DOH Recommendation

Contingent approval.

Need Summary

The proposed members are all not-for-profit organizations certified by the NYS Office of Alcoholism and Substance Abuse Services under Article 32 of the NYS Mental Hygiene Law, currently serving thousands of poor, homeless and other NYC residents, many of whom suffer from substance/ chemical addiction, HIV/AIDS, mental health disorders and/or have experienced recent incarceration. The projected number of visits are:

Year 1	20,436
Year 3	21,892
Year 5	23,454

The proposed members have experience in reaching out and serving this target population, and have gained the trust of this population through the development of strong working relationships, which will ensure that these underserved patients will utilize the healthcare services being proposed in this project.

Program Summary

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

Financial Summary

Project costs will be met with a $462,822 equipment loan, a $466,827 loan from PCDC and $164,056 of member's equity.

Budget:		
	Revenues:	*$ 2,028,332*
	Expenses:	*1,977,479*
	Gain/(Loss):	*$ 50,853*

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

Architectural Summary

The fixed main site will be 1,474 SF, and will include: a reception area, a waiting room, two exam rooms, two consultation rooms, two toilet rooms, a janitor's closet, clean storage room, soiled storage room, and two offices.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment loan that is acceptable to the Department of Health. [BFA]
3. Submission of an executed PCDC loan agreement that is acceptable to the Department. [BFA]
4. Submission of an executed working capital loan commitment that is acceptable to the Department. [BFA]
5. Submission of an executed lease rental agreement that is acceptable to the Department. [BFA, CSL]
6. Submission of an executed billing agreement that is acceptable to the Department. [BFA, CSL]
7. Submission of an executed garage lease that is acceptable to the Department. [BFA]
8. Submission of an executed copy of the Amendment of the Certificate of Incorporation that is acceptable to the Department. [CSL]
9. Submission of amended bylaws that are acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The applicant shall complete construction by April 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]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to start of construction. [AER]

Council Action Date

June 7, 2012.

Need Analysis

Background

Mobile Health Partners, Inc. is seeking approval to establish and construct a mobile and fixed site diagnostic and treatment center (D&TC). The D&TC will consist of two mobile vans and a fixed site located on the 1st floor of 502 Bergen Street, Brooklyn, 11217, in Kings County. Additionally there will be a name change from Mobile Health Partners to Street Corner Clinic, Inc.

Analysis

The purpose of this project is to provide primary care and psychology services, to include assessment and referral and medication management only, to vulnerable populations in Brooklyn and Staten Island. Street Corner Clinic will collaborate with Project Hospitality, a not for profit providing services to the chronically ill in Staten Island, and the Brooklyn AIDS Task Force. Each of these organizations has experience providing services to people with multiple diagnoses, predominantly HIV, substance abuse, and mental illness. Street Corner Clinic will provide primary care and referral to the clients of these organizations, most of whom do not currently receive services consistently or comprehensively. The two mobile vans will operate in Brooklyn and Staten Island and will stop at multiple locations throughout the week to reach the patients who are not likely to go to the D&TC.

Projected Visits are as follows:

Service	*1st Year*	*3rd Year*	*5th Year*
Primary Care	15,038	16,109	17,258
Psychology	5,398	5,783	6,196
Total	*20,436*	*21,892*	*23,454*

Conclusion

Street Corner Clinic will serve chronically ill patients that do not typically seek treatment within traditional facilities. The partnership with Project Hospitality and the Brooklyn AIDS Task Force will allow them to provide patients with primary care and comprehensive social services.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Proposal

Proposed Operator	**Street Corner Clinic**
Operator Type	not-for-profit corporation
Site Address	5216 4th Avenue, Brooklyn and two mobile vans with stops in Brooklyn and Staten Island
Services	Primary Medical Care, Health Education, and Psychology
Hours of Operation	Varies depending on location. Includes weekend and evening hours.
Staffing (1st Year / 3rd Year)	15.56 FTEs / 16.10 FTEs
Medical Director(s)	Jordan Glaser
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Lutheran Medical Center and Richmond University Medical Center

Compliance with Applicable Codes, Rules and Regulations

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

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

Character and Competence

The Board of Directors and offices held are as follows:

Name	**Office Held**
Raymond Figueroa	Chairman/President
Gasner Garcon	Vice President/Treasurer
Diane Arneth	Secretary
Karen Benker, M.D.	Member
Elaine Greeley	Member
Lenore Hildebrand	Member
Joseph McCole	Member

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action. Based on this information, staff concluded that the facilities have provided a substantially consistent high level of care as defined in New York State Public Health Law 2810(a)(3) and 10NYCRR 600.2 during the past 10 years.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Sublease Rental Agreement

The applicant has submitted a draft rental agreement, the terms of which are summarized below:

Sublessor:	Brooklyn AIDS Task Force
Sublessee:	Street Corner Clinic, Inc.
Premises:	Approximately 1,671 sq. ft. located on the first floor of the building located at 502 Bergen Street, Brooklyn.
Rental:	$50,130/year ($30/sq. ft) with a 3% increase yearly.
Term:	5 year term with the option to renew for another 5 year term.
Provisions:	The lessee shall be responsible for insurance, utilities and maintenance.

Brooklyn AIDS Task Force is a proposed member of Street Corner Clinic, Inc. Therefore, the lease agreement is a non-arm's length agreement. Letters of opinion from licensed commercial real estate brokers have been submitted indicating rent reasonableness.

Garage Lease

The applicant has submitted a draft garage lease, the terms of which are summarized below:

Facility Operator:	Street Corner Clinic, Inc.
Provider:	Auto Works Group, Inc.
Purpose:	To store mobile health van when not in use
Premises:	Fence enclosed area located at 312 Port Richmond Ave.
Term:	One year renewable yearly
Compensation:	$1,800 per year

Billing Agreement

The applicant has submitted a draft billing agreement, the terms of which are summarized below:

Facility Operator:	Street Corner Clinic, Inc
Provider:	To be determined upon CON contingent approval
Services Provided:	Provide high quality medical billing services; assist in the implementation of strategies to improve medical billing processes and revenue collection; support in meeting the changing industry regulatory and payor requirements; develop and implement policies, procedures, and operational processes; training in policies and procedures.
Term:	One year renewable yearly
Compensation:	$10,000 annually and 2% of total billings.

Street Corner Clinic, Inc. has stated that upon CON contingent approval, they plan to formally interview billing companies. DOH staff has reviewed the conservative estimate of this expense that was provided by a potential billing service provider and it seems reasonable.

It is noted that Department staff has discussed with the applicant that the compensation structure appears to violate regulation 600.9 c and the applicant agrees to submit a compliant executed billing agreement at the time of contingency satisfaction.

Total Project Cost and Financing

Total project costs are estimated at $1,093,705, broken down as follows:

Renovation & Demolition	$338,873
Design Contingency	7,624
Construction Contingency	33,887
Architect/Engineering Fees	33,887
Consultant Fees	83,600
Movable Equipment	552,927
Financing Costs	14,005
Interim Interest Expense	22,758
Application Fee (Safety Net)	1,250
Additional Processing Fee	4,894
Total Project Cost	$1,093,705

The financing plan appears as follows:

Equipment Loan (5.6%, 5 years)	$462,822
PCDC Loan (6%, 5 years)	466,827
Cash	164,056

Letters of interest from Tesco, a transportation equipment sales corporation and Primary Care Development Corporation (PCDC) have been submitted by the applicant.

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:	$1,895,163	$2,028,332
Expenses:		
Operating	$1,678,710	$1,790,275
Capital	208,586	187,204
Total Expenses:	$1,887,296	$1,977,479
Net Income:	$7,867	$50,853
Utilization (visits)	20,436	21,892
Cost per visit	$92.35	$90.33

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

	Year One	Year Three
Medicare Fee for Service	22.1%	22.0%
Medicaid Fee for Service	56.7%	56.7%
Medicaid Managed Care	15.7%	15.7%
Charity Care	5.5%	5.6%

Expenses and utilization are based on the historical experience of the three proposed members in serving the target population.

Capability and Feasibility

The applicant will finance total project costs of $1,093,705 through an equipment loan of $462,822 at stated terms, for which a letter of interest has been provided, a PCDC loan of $466,827 at stated terms for which a letter of interest has been provided, and the remaining $164,056 will be financed through member's equity. Each proposed member has signed an affidavit stating they will contribute disproportionate to their membership percentage. Presented as BFA Attachments A through F are the financial statements of the proposed members, which indicates the availability of sufficient funds.

Working capital needs are estimated at $329,580 based on two months of third year expenses. The applicant will finance $164,790 of working capital at an interest rate of 8% over 5 years for which a letter of interest has been provided by PCDC. The remaining $164,790 will be provided as equity by the three proposed members. Presented as BFA Attachment G, is the pro-forma balance sheet of Street Corner Clinic, Inc. as of the first day of operation, which indicates positive net assets of $1,423,285.

The submitted budget indicates a net income of $7,867 and $50,853 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for diagnostic and treatment centers. The budget appears reasonable.

Based on the preceding, and subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Background

The fixed site will be 1,474 SF, and will include the following: a reception area, a waiting room, two exam rooms, two consultation rooms, two toilet rooms, a janitor's closet, clean storage room, soiled storage room, and two offices.

Environmental Review:

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

Recommendation

From an architectural perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary 2009-2010, Brooklyn Aids Task Force, Inc.
BFA Attachment B	Draft Financial Summary 1st quarter 2011, Brooklyn Aids Task Force, Inc.
BFA Attachment C	Financial Summary 2009-2010, Project Hospitality, Inc.
BFA Attachment D	Draft Financial Summary as of 12/31/11, Project Hospitality, Inc.
BFA Attachment E	Financial Summary 2009-2010, Community Health Action of Staten Island, Inc.
BFA Attachment F	Draft Financial Summary 1st quarter 2011, Community Health Action of Staten Island, Inc.
BFA Attachment G	Pro-forma balance sheet
BFA Attachment H	Establishment Checklist

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June, 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 D&TC to be called Street Corner Clinic, Inc. The D&TC will consist of a main site and two mobile health vans, 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:
101101 B	Street Corner Clinic, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed equipment loan that is acceptable to the Department of Health. [BFA]
3. Submission of an executed PCDC loan agreement that is acceptable to the Department. [BFA]
4. Submission of an executed working capital loan commitment that is acceptable to the Department. [BFA]
5. Submission of an executed lease rental agreement that is acceptable to the Department. [BFA, CSL]
6. Submission of an executed billing agreement that is acceptable to the Department. [BFA, CSL]
7. Submission of an executed garage lease that is acceptable to the Department. [BFA]
8. Submission of an executed copy of the Amendment of the Certificate of Incorporation that is acceptable to the Department. [CSL]
9. Submission of amended bylaws that are acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The applicant shall complete construction by April 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]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
7. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to start of construction. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: January 31, 2012

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Elizabeth Church Manor Nursing Home Corporation

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Elizabeth Church Manor Nursing Home Corporation. Among other things not relevant to concerns of the Department, this not-for profit corporation seeks approval to change its name to "UMH ECM Corp." Not-for-Profit Corporation Law § 804(a) and 10 NYCRR § 600.11(a)(1) require that the Public Health and Health Planning Council approve a change in corporate name.

Also attached is a letter dated January 4, 2012 from Paul R. Hoffman, attorney for the corporation, explaining the need for the amendment to the Certificate of Incorporation.

The proposed Certificate of Amendment is in legally acceptable form.

Attachments

Restated Certificate of Incorporation

of

The Elizabeth Church Manor Nursing Home Corporation

Under Section 805 of the
Not-for-Profit Corporation Law

We, the undersigned, for the purpose of amending and restating the Certificate of Incorporation of The Elizabeth Church Manor Nursing Home Corporation under Section 805 of the Not-for-Profit Corporation Law of the State of New York, do hereby certify:

ONE: The name of the corporation is THE ELIZABETH CHURCH MANOR NURSING HOME CORPORATION, hereinafter referred to as the "Corporation".

TWO: The date its Certificate of Incorporation was filed with the Department of State was June 17, 1992 under the Not-for-Profit Corporation Law of the State of New York.

THREE: The Certificate of Incorporation is amended to effect the following amendments:

(a) To change the name of the Corporation to "UMH ECM Corp." and change paragraph FIRST of the Certificate of Incorporation to effect such change;

(b) To amend paragraph FIFTH (c) of the Certificate of Incorporation to change the references to Section 404 (u) of the Not-For-Profit Corporation Law to Section 404 (w) of the Not-For-Profit Corporation Law;

(c) To omit paragraph EIGHTH of the Certificate of Incorporation relating to the directors and officers of the Corporation;

(d) To omit paragraph NINTH of the Certificate of Incorporation relating to the Bylaws of the Corporation;

(e) To omit paragraph ELEVENTH of the Certificate of Incorporation relating to the indemnification of directors, officers and committee members;

(f) To amend the name of the supported organization in paragraph FIFTEENTH of the Certificate of Incorporation; and

(g) To renumber and re-letter the paragraphs of the Certificate of Incorporation

after the amendments referenced above are made.

FOUR: The text of the Certificate of Incorporation of the Corporation is hereby restated as amended to read as herein set forth in full as follows:

CERTIFICATE OF INCORPORATION

OF

UMH ECM CORP.

Under Section 402 of the
Not-for-Profit Corporation Law

FIRST: The name of the corporation is UMH ECM Corp., hereinafter referred to as "the Corporation".

SECOND: The duration of the Corporation shall be perpetual.

THIRD: The principal office of the Corporation is to be located in the County of Broome and State of New York.

FOURTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against it served upon him shall be 10 Acre Place, Binghamton, New York 13904.

FIFTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and shall be a type B corporation under Section 201 of the Not-For-Profit Corporation Law. The purposes for which the Corporation is formed, and the business and objects to be carried on and promoted by it, are as follows:

(a) To provide elderly persons and handicapped persons in need of such facilities with skilled nursing home facilities and services designed to meet their physical, social and psychological needs, and to promote their health, security, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance and operation thereof on a non-profit basis. The Corporation is organized exclusively to develop, establish, operate and maintain a skilled nursing home project.

(b) The Corporation is irrevocably dedicated to and operated exclusively for, non-profit purposes; and all income and earnings of the Corporation shall be used exclusively for corporate purposes. No part of the net earnings of the Corporation shall inure to the benefit of

any member, trustee, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(c) Nothing contained herein shall authorize the corporation to establish or operate any adult care facility, or to solicit contributions for any such purpose, or to perform any of the other activities set forth in Section 404(b) through 404(w) of the Not-For-Profit Corporation Law or Section 460-a of the Social Services Law of the State of New York, without first obtaining any and all of the consents or approvals required pursuant to Section 404(b) through 404(w) of the Not-For-Profit Corporation Law or Section 460-a of the Social Services Law of the State of New York.

(d) To create a private corporation to construct or to acquire a skilled nursing home project, and to operate the same; to enable the financing of the construction or acquisition of such project with the assistance of mortgage insurance under the National Housing Act; to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to charges, capital structure, rate of return and methods of operation; to acquire any property, real or personal, in fee or under lease or any rights therein or appurtenant thereto, necessary for the construction and operation of such project; and to borrow money, and to issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien, in furtherance of any or all of the objects of its business in connection with said project.

(e) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes as specified in §501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under IRC §501(c)(3) or corresponding provisions of any subsequent Federal tax laws.

SIXTH: The Corporation is empowered:

(a) To buy, own, sell, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in paragraph FIFTH hereof.

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property.

(c) To do and perform all acts reasonably necessary or incidental to

accomplish the purposes of the Corporation.

(d) Specifically and particularly, to enter into a Regulatory Agreement setting out the requirements of the Secretary of Housing and Urban Development.

(e) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all of the remaining assets and property of the Corporation shall after payment of necessary expenses thereof be distributed to such organizations as shall qualify under section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal tax laws. Any conveyance of the Corporation's property upon the dissolution of the Corporation or the winding up of its affairs shall be subject to the approval of a Justice of the Supreme Court of the State of New York.

SEVENTH: All approvals or consents required before this Certificate may be filed by the Secretary of State are endorsed upon or annexed to this Certificate.

EIGHTH: No substantial part of the activities of the Corporation shall involve the carrying on of propaganda or otherwise attempting to influence legislation [except as otherwise provided in Internal Revenue Code Section 501(h)] and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidates for public office.

NINTH: In any taxable year in which the Corporation is a private foundation as described in I.R.C. Section 509, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under I.R.C. Section 4942, and the Corporation shall not (a) engage in any act of self-dealing as defined in I.R.C. Section 4941(d), retain any excess business holdings as defined in I.R.C. Section 4943(c), (b) make any investments in such manner as to subject the Corporation to tax under I.R.C. Section 4944, or (c) make any taxable expenditures as defined in I.R.C. Section 4945(d) or corresponding provisions of any subsequent Federal tax laws.

TENTH: The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

ELEVENTH: The Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (a) as a corporation that is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Code, or (b) as a corporation, contributions to which are deductible under Section 170 of the Code.

TWELFTH: The Corporation is a supporting organization of UMH NY Corp. within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986.

This Restatement of the Certificate of Incorporation of the Corporation was authorized by

a vote of a majority of all members entitled to vote thereon at a meeting of the members.

IN WITNESS WHEREOF, this certificate has been executed this 12th day of July, 2011, and is affirmed by the signers hereof as true under the penalties of perjury.

Dated: July 12th, 2011

UMH ECM Corp.

Keith D. Chadwick
President and CEO

Warren E. Wilkins
Chairperson

Leslie Dusten
Secretary

RESTATED CERTIFICATE OF INCORPORATION

OF

THE ELIZABETH CHURCH MANOR NURSING HOME CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law
of the State of New York

Filed by: Levene Gouldin & Thompson, LLP
450 Plaza Drive
Vestal, New York 13850

LEVENE GOULDIN & THOMPSON, LLP
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January 4, 2012

via hand delivery
New York State
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

RE: Restated Certificate of Incorporation of The Elizabeth Church Manor Nursing Home Corporation

Dear Sir or Madam:

We represent The Elizabeth Church Manor Nursing Home Corporation (the "Corporation"), a New York not-for-profit corporation, with respect to its proposed filing of a Restated Certificate of Incorporation dated July 12, 2011 in the New York State Secretary of State's Office.

We understand that the New York State Department of Health has requested a letter specifying the current and proposed names of the Corporation and explaining the nature of and reasons for the requested name change. This letter is intended to satisfy that request.

The current name of the Corporation is: "The Elizabeth Church Manor Nursing Home Corporation."

The proposed name for the Corporation is: "UMH ECM Corp."

The nature of and the reasons for the requested name change are as follows:

The current name of the Corporation is lengthy and cumbersome to use in practical applications. As a result of the length of the name, employees of the Corporation are often confused by and unsure of the Corporation's correct legal name. Therefore, when taking action on behalf of the Corporation which involves the use of the corporate name, employees often make errors in the name.

Vendors and others with business relationships with the Corporation are also often unsure of the correct corporate name. In addition, because of the length of the name, the full, complete name of the Corporation sometimes does not fit within the space for the name

on documents, whether paper or electronically submitted, used by some vendors. This can result in the use of a portion of the current name, which is potentially confusing.

Also, the Corporation is required to submit or file various documents, forms and information to governmental agencies, departments or bodies on a periodic basis. Many of those required filings are required to be made on-line, or on government provided forms, some of which do not accept names as lengthy as the Corporation's name. Similar to the confusion which can occur with vendors, this results in some governmental forms filed by the Corporation using an incomplete name. For example, when the Corporation recently filed its Certificate of Compliance with the Federal Deficit Reduction Act of 2005, with the New York State Office of the Medicaid Inspector General, the name of the Corporation was too long to fit in the on-line database and needed to be truncated.

The proposed name is intended to shorten and simplify the name of the Corporation to decrease confusion among employees and vendors of the Corporation, and simplify the filing of required governmental documents, forms and information. The letters "UMH" in the proposed name recognizes that the Corporation is an affiliate of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York ("MHA"), a New York not-for-profit corporation which has proposed to change its name to UMH NY Corp. The directors of the Corporation are the same persons serving as directors of MHA, and the officers of the Corporation are the same persons serving as officers of MHA. The Corporation is a supporting organization of MHA within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986, and the Corporation is a member, as a subordinate, of the Internal Revenue Service group exemption whose parent organization is MHA. The letters "ECM" are intended to be an abbreviation of "Elizabeth Church Manor," which appears in the current name.

Thank you for your consideration. We trust that this letter responds to your request, but if you need further information please do not hesitate to contact us.

Very truly yours,

LEVENE GOULDIN & THOMPSON, LLP

Paul R. Hoffmann

By: Paul R. Hoffmann

PRH/lab

RESOLUTION

RESOLVED, that the Public Health Council, on this 7th day of June, 2012, approves the filing of the Restated Certificate of Incorporation of The Elizabeth Church Manor Nursing Home Corporation, dated July 12, 2011.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M

TO: Public Health and Health Planning Council (Council)

FROM: James E. Dering, General Counsel

DATE: May 8, 2012

SUBJECT: Proposed Change in Corporate Name of James G. Johnston Memorial Nursing Home to UMH JGJ Corp.

Attached for the Council's review and approval is a photocopy of a proposed Restated Certificate of Incorporation of The James G. Johnston Memorial Nursing Home Corporation. The James G. Johnston Memorial Nursing Home Corporation is seeking the Council's approval to change its corporate name to "UMH JGJ Corp.," which it believes would simplify the corporation's dealings and minimize confusion. 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).

The James G. Johnston Memorial Nursing Home Corporation was originally formed pursuant to a Certificate of Incorporation filed with the Secretary of State on July 17, 1992, and approved by the Council on June 22, 1992. Subsequent amendments were made to the Corporation's Certificate making the duration of the corporation perpetual, as approved by the Council on August 2, 1993, and amending other provisions not subject to Council approval (which provisions are being deleted by the current proposed Restated Certificate), the last prior being filed with the Secretary of State's office on June 19, 1998.

In addition to the proposed Restated Certificate of Incorporation, also attached is a letter from the applicant's attorney explaining this matter in more detail.

The proposed Restated Certificate of Incorporation is legally acceptable in form and the Department has no objection to its filing.

Attachments

Restated Certificate of Incorporation

of

The James G. Johnston Memorial Nursing Home Corporation

Under Section 805 of the
Not-for-Profit Corporation Law

We, the undersigned, for the purpose of amending and restating the Certificate of Incorporation of The James G. Johnston Memorial Nursing Home Corporation under Section 805 of the Not-for-Profit Corporation Law of the State of New York, do hereby certify:

ONE: The name of the corporation is THE JAMES G. JOHNSTON MEMORIAL NURSING HOME CORPORATION, hereinafter referred to as the "Corporation".

TWO: The date its Certificate of Incorporation was filed with the Department of State was July 17, 1992 under the Not-for-Profit Corporation Law of the State of New York.

THREE: The Certificate of Incorporation is amended to effect the following amendments:

(a) To change the name of the Corporation to "UMH JGJ Corp." and change paragraph FIRST of the Certificate of Incorporation to effect such change;

(b) To amend paragraph FIFTH (c) of the Certificate of Incorporation to change the references to Section 404 (u) of the Not-For-Profit Corporation Law to Section 404 (w) of the Not-For-Profit Corporation Law;

(c) To omit paragraph EIGHTH of the Certificate of Incorporation relating to the directors and officers of the Corporation;

(d) To omit paragraph NINTH of the Certificate of Incorporation relating to the Bylaws of the Corporation;

(e) To omit paragraph ELEVENTH of the Certificate of Incorporation relating to the indemnification of directors, officers and committee members;

(f) To amend the name of the supported organization in paragraph FIFTEENTH of the Certificate of Incorporation; and

(g) To renumber and re-letter the paragraphs of the Certificate of Incorporation after the amendments referenced above are made.

FOUR: The text of the Certificate of Incorporation of the Corporation is hereby restated as amended to read as herein set forth in full as follows:

CERTIFICATE OF INCORPORATION

OF

UMH JGJ CORP.

Under Section 402 of the
Not-for-Profit Corporation Law

FIRST: The name of the corporation is UMH JGJ Corp., hereinafter referred to as "the Corporation".

SECOND: The duration of the Corporation shall be perpetual.

THIRD: The principal office of the Corporation is to be located in the County of Broome and State of New York.

FOURTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against it served upon him shall be 10 Acre Place, Binghamton, New York 13904.

FIFTH: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and shall be a type B corporation under Section 201 of the Not-For-Profit Corporation Law. The purposes for which the Corporation is formed, and the business and objects to be carried on and promoted by it, are as follows:

(a) To provide elderly persons and handicapped persons in need of such facilities with skilled nursing home facilities and services designed to meet their physical, social and psychological needs, and to promote their health, security, happiness and usefulness in longer living, the charges for such facilities and services to be predicated upon the provision, maintenance and operation thereof on a non-profit basis. The Corporation is organized exclusively to develop, establish, operate and maintain a skilled nursing home project.

(b) The Corporation is irrevocably dedicated to and operated exclusively for, non-profit purposes; and all income and earnings of the Corporation shall be used exclusively for corporate purposes. No part of the net earnings of the Corporation shall

inure to the benefit of any member, trustee, director, officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

(c) Nothing contained herein shall authorize the corporation to establish or operate any adult care facility, or to solicit contributions for any such purpose, or to perform any of the other activities set forth in Section 404(b) through 404(w) of the Not-For-Profit Corporation Law or Section 460-a of the Social Services Law of the State of New York, without first obtaining any and all of the consents or approvals required pursuant to Section 404(b) through 404(w) of the Not-For-Profit Corporation Law or Section 460-a of the Social Services Law of the State of New York.

(d) To create a private corporation to construct or to acquire a skilled nursing home project, and to operate the same; to enable the financing of the construction or acquisition of such project with the assistance of mortgage insurance under the National Housing Act; to enter into, perform, and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the corporation, including, expressly, any contract or contracts with the Secretary of Housing and Urban Development which may be desirable or necessary to comply with the requirements of the National Housing Act, as amended, and the Regulations of the Secretary thereunder, relating to the regulation or restriction of mortgagors as to charges, capital structure, rate of return and methods of operation; to acquire any property, real or personal, in fee or under lease or any rights therein or appurtenant thereto, necessary for the construction and operation of such project; and to borrow money, and to issue evidence of indebtedness, and to secure the same by mortgage, deed of trust, pledge, or other lien, in furtherance of any or all of the objects of its business in connection with said project.

(e) Notwithstanding any other provisions of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes as specified in §501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under IRC §501(c)(3) or corresponding provisions of any subsequent Federal tax laws.

SIXTH: The Corporation is empowered:

(a) To buy, own, sell, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in paragraph FIFTH hereof.

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property.

(c) To do and perform all acts reasonably necessary or incidental to accomplish the purposes of the Corporation.

(d) Specifically and particularly, to enter into a Regulatory Agreement setting out the requirements of the Secretary of Housing and Urban Development.

(e) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual for less than the fair market value of such property, and all of the remaining assets and property of the Corporation shall after payment of necessary expenses thereof be distributed to such organizations as shall qualify under section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent Federal tax laws. Any conveyance of the Corporation's property upon the dissolution of the Corporation or the winding up of its affairs shall be subject to the approval of a Justice of the Supreme Court of the State of New York.

SEVENTH: All approvals or consents required before this Certificate may be filed by the Secretary of State are endorsed upon or annexed to this Certificate.

EIGHTH: No substantial part of the activities of the Corporation shall involve the carrying on of propaganda or otherwise attempting to influence legislation [except as otherwise provided in Internal Revenue Code Section 501(h)] and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidates for public office.

NINTH: In any taxable year in which the Corporation is a private foundation as described in I.R.C. Section 509, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under I.R.C. Section 4942, and the Corporation shall not (a) engage in any act of self-dealing as defined in I.R.C. Section 4941(d), retain any excess business holdings as defined in I.R.C. Section 4943(c), (b) make any investments in such manner as to subject the Corporation to tax under I.R.C. Section 4944, or (c) make any taxable expenditures as defined in I.R.C. Section 4945(d) or corresponding provisions of any subsequent Federal tax laws.

TENTH: The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

ELEVENTH: The Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (a) as a corporation that is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Code, or (b) as a corporation, contributions to which are deductible under Section 170 of the Code.

TWELFTH: The Corporation is a supporting organization of UMH NY Corp. within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986.

This Restatement of the Certificate of Incorporation of the Corporation was authorized by a vote of a majority of all members entitled to vote thereon at a meeting of the members.

IN WITNESS WHEREOF, this certificate has been executed this 12th day of July, 2011, and is affirmed by the signers hereof as true under the penalties of perjury.

Dated: July 12th, 2011

UMH JGJ Corp.

Keith D. Chadwick
President and CEO

Chairperson

Secretary

RESTATED CERTIFICATE OF INCORPORATION

OF

THE JAMES G. JOHNSTON MEMORIAL NURSING HOME CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law
of the State of New York

Filed by: Levene Gouldin & Thompson, LLP
450 Plaza Drive
Vestal, New York 13850

LEVENE GOULDIN & THOMPSON, LLP

ATTORNEYS AT LAW

E-mail: phoffmann@binghamtonlaw.com
Direct Dial: 607.584.5667

January 4, 2012

via hand delivery
New York State
Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

RE: Restated Certificate of Incorporation of The James G. Johnston Memorial Nursing Home Corporation

Dear Sir or Madam:

We represent The James G. Johnston Memorial Nursing Home Corporation (the "Corporation"), a New York not-for-profit corporation, with respect to its proposed filing of a Restated Certificate of Incorporation dated July 12, 2011 in the New York State Secretary of State's Office.

We understand that the New York State Department of Health (the "Department") has requested a letter specifying the current and proposed names of the Corporation and explaining the nature of and reasons for the requested name change. This letter is intended to satisfy that request.

The current name of the Corporation is: "The James G. Johnston Memorial Nursing Home Corporation."

The proposed name for the Corporation is: "UMH JGJ Corp."

The nature of and the reasons for the requested name change are as follows:

The current name of the Corporation is lengthy and cumbersome to use in practical applications. As a result of the length of the name, employees of the Corporation are often confused by and unsure of the Corporation's correct legal name. Therefore, when taking action on behalf of the Corporation which involves the use of the corporate name, employees often make errors in the name.

Vendors and others with business relationships with the Corporation are also often unsure of the correct corporate name. In addition, because of the length of the name, the full, complete name of the Corporation sometimes does not fit within the space for the name

on documents, whether paper or electronically prepared and submitted, used by some vendors. This can result in the use of a portion of the correct name, which is potentially confusing.

Also, the Corporation is required to submit or file various documents, forms and information to governmental agencies, departments or bodies on a periodic basis. Many of those required filings are required to be made on-line, or on government provided forms, some of which do not accept names as lengthy as the Corporation's name. Similar to the confusion which can occur with vendors, this results in some governmental forms filed by the Corporation using an incomplete name. For example, when the Corporation recently filed its Certificate of Compliance with the Federal Deficit Reduction Act of 2005, with the New York State Office of the Medicaid Inspector General, the name of the Corporation was too long to fit in the on-line database and needed to be truncated.

The proposed name is intended to shorten and simplify the name of the Corporation to decrease confusion among employees and vendors of the Corporation, and simplify the filing of required governmental documents, forms and information. The letters "UMH" in the proposed name recognizes that the Corporation is an affiliate of and a supporting organization within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986 of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York, a New York not-for-profit corporation which has proposed to change its name to UMH NY Corp. The letters "JGJ" are intended to be an abbreviation of "James G. Johnston," which appears in the current name.

We also understand that the Department has requested information regarding the identity of UMH NY Corp. and its relationship to the Corporation. As stated above, the Corporation is an affiliate of The Methodist Homes For the Aging of the Wyoming Conference in the State of New York ("MHA"), a New York not-for-profit corporation. The directors of the Corporation are the same persons serving as directors of MHA, and the officers of the Corporation are the same persons serving as officers of MHA. The Corporation is a supporting organization of MHA within the meaning of Section 509(a)(3) of the Internal Revenue Code of 1986, and the Corporation is a member, as a subordinate, of the Internal Revenue Service group exemption whose parent organization is MHA. MHA has submitted a restated certificate of incorporation to the New York State Secretary of State's office for filing, which restated certificate of incorporation would, among other things, change MHA's name to "UMH NY Corp."

Thank you for your consideration. We trust that this letter responds to your request, but if you need further information please do not hesitate to contact us.

Very truly yours,

LEVENE GOULDIN & THOMPSON, LLP

Paul R. Hoffmann

By: Paul R. Hoffmann

PRH/lab

RESOLUTION

RESOLVED, that the Public Health Council, on this 7th day of June, 2012, approves the filing of the Restated Certificate of Incorporation of The James G. Johnston Memorial Nursing Home Corporation, dated July 12, 2011.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: May 11, 2012

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of NYU Downtown Hospital Chinese Community Partnership for Health Foundation, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of NYU Downtown Hospital Chinese Community Partnership for Health Foundation, Inc. ("CCPHF"). This not-for profit corporation seeks approval to change its name to "New York Downtown Hospital Chinese Community Partnership for Health Foundation, Inc." The Public Health Council approved the establishment of the corporation in 2000 to solicit contributions for Chinese Community Partnership for Health, a program of New York Downtown Hospital. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated March 16, 2012 from Lucia F. Deng, attorney for the corporation. As explained in that letter, the name change is intended to align the corporation's name with that of its beneficiary, which changed its name from NYU Downtown Hospital to New York Downtown Hospital in 2005.

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments

Proskauer Proskauer Rose LLP Eleven Times Square New York, NY 10036-8299

March 16, 2012

Lucia F. Deng
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By Email and FedEx

Colleen Frost
Executive Secretary, Public Health and Health Planning Council
NYS Department of Health
Health Facility Planning
Hedley Building, 6th Floor
433 River Street
Troy, New York 12180

Re: Certificate of Amendment of CCPHF

Dear Ms. Frost:

We are counsel to the NYU Downtown Hospital Chinese Community Partnership for Health Foundation, Inc. ("CCPHF") and New York Downtown Hospital (the "Hospital"). We submit for the approval of the Public Health and Health Planning Council (the "Council"), on CCPHF's behalf, a Certificate of Amendment to the Certificate of Incorporation of CCPHF. CCPHF is a New York Not-For-Profit Corporation that was formed to support New York Downtown Hospital, and it received approval from the Council upon its incorporation.

In 2005, the Hospital changed its name (i.e., "NYU Downtown Hospital" to "New York Downtown Hospital"), which change was approved by the Council. We now wish to update all references to "NYU Downtown Hospital" to "New York Downtown Hospital" in CCPHF's charter. This is the only change that is effected by this Certificate of Amendment.

Enclosed are copies of the proposed Certificate of Amendment and the Certificate of Incorporation of CCPHF along with a copy of the Certificate of Amendment of the Hospital effecting its name change with the Council's approval. Please let me know if you need any additional information. Thank you for your consideration.

Respectfully submitted,

Lucia F. Deng

Enclosures

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

NYU DOWNTOWN HOSPITAL CHINESE COMMUNITY PARTNERSHIP FOR HEALTH FOUNDATION, INC.

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is NYU Downtown Hospital Chinese Community Partnership for Health Foundation, Inc. (the "Corporation").

SECOND: The date of filing of the Certificate of Incorporation with the Department of State is January 8, 2001.

THIRD: The Corporation was formed under the New York Not-for-Profit Corporation Law (the "N-PCL").

FOURTH: The Corporation is a corporation as defined in Section 102(a)(5) of the N-PCL.

FIFTH: The Corporation is a Type B corporation under Section 201 of the N-PCL. The Corporation shall remain a Type B Corporation under Section 201 of the N-PCL as a result of the amendments effected by this Certificate of Amendment.

SIXTH: The amendments effected by this Certificate of Amendment are as follows:

Article FIRST of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to change the name of the Corporation, and shall read in its entirety as follows:

> FIRST: The name of the corporation is New York Downtown Hospital Chinese Community Partnership for Health Foundation, Inc.

Article THIRD of the Certificate of Incorporation, which sets forth the purposes of the Corporation, is hereby amended to update the references to NYU Downtown Hospital to New York Downtown Hospital, the new name of such hospital. As amended, Article THIRD shall read in its entirety as follows:

> THIRD: The purposes for which the Corporation is formed are as follows:
>
> (a) To raise and provide funds on an annual basis to support the community health and other health care activities of the

Chinese Community Partnership for Health, which has been established as a program of New York Downtown Hospital.

(b) To act exclusively for the benefit of the Chinese Community Partnership for Health of New York Downtown Hospital.

(c) To conduct such activities as shall from time to time be found appropriate in connection with the foregoing purposes and as are lawful for a not-for-profit corporation under the Not-for-Profit Corporation Law.

(d) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitation and condition that, notwithstanding any other provision of this certificate, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious and/or 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 a corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

SEVENTH: The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: 170 William Street, New York, New York 10038, Attention: President.

EIGHTH: In accordance with Section 802(a)(1) of the N-PCL, this Certificate of Amendment was duly authorized by the sole member of the Corporation by written consent dated as of February 22, 2012.

IN WITNESS WHEREOF, I have signed this certificate and hereby affirm it as true under penalties of perjury this 16th day of March 2012.

Name: Eric Sin-Kam Poon, M.D.
Title: President

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of June, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of NYU Downtown Hospital Chinese Community Partnership for Health Foundation, Inc., dated March 16, 2012.

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	320 MacDougal Street, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit
Application Number:	1633-L

Description of Project:

320 MacDougal Street, 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:

Herve Desvarieux, PCA, HHA – President/Secretary – 198 shares
Truck Driver, Pepsi-Cola

Kendra D. England – General Manager – 2 shares
Administrative Assistant, Emigrant Training Center

The Board of Directors of 320 MacDougal Street, Inc. comprises the following individuals:

Herve Desvarieux, PCA, HHA – President/Secretary
(Previously Disclosed)

Kendra D. England – General Manager –
(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 applicant proposes to serve the residents of the following counties from an office located at 320 MacDougal Street, Apt. 1R, Brooklyn, New York, 11233

Bronx	Kings	Nassau	New York
Richmond	Queens		

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:	May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Aide and Comfort, Inc.
Address:	Lawrence
County:	Nassau
Structure:	For-Profit Corporation
Application Number:	1712-L

Description of Project:

Aide and Comfort, 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 1,000 shares of stock which are owned as follows:
Miriam Feldman owns 475 shares, Uriel Feldman owns 450 shares, Harold Feldman owns 25 shares, Josef Feldman owns 25 shares and Shirley Cohen owns 25 shares.

The Board of Directors of Aide and Comfort, Inc. comprises the following individuals:

Miriam Feldman, Chairperson
Marketing Manager, Live Wire Enterprises

Uriel Feldman, LSW, Vice Chairperson
Program Director, Heart to Heart Home Care (NJ)

Josef Feldman, Secretary, Treasurer
Financial Analyst, Live Wire Enterprises

Shirley Cohen, Director
CEO, Home Sweet Home Care (CA)

Harold Feldman, Director
President, Live Wire Enterprises

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The State of New Jersey Department of Law & Public Safety indicated no issues with Uriel Felman's license as a Licensed Social Worker.

The applicant proposes to serve the residents of the following counties from an office located at 124 Rand Place, Lawrence, New York 11559:

Nassau Suffolk Westchester Rockland Queens

The applicant proposes to serve the residents of the following counties from an office located in New York:

New York Bronx Kings 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: May 11, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Alissa Home Care, Inc.
Address:	Brooklyn
County:	Kings
Structure:	Not- For- Profit Corporation
Application Number:	1688-L

Description of Project:

Alissa Home Care, Inc., a not- for- profit business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of the Board of Directors of Alissa Home Care, Inc. comprise the following individual:

Hiemwantie Sparzak, President
Director, ADL Institute
(home health aide training)
Home Health Aide, Emanuel Services

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 1170 Liberty Avenue, Brooklyn, New York 11208:

Kings	Queens	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide
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:	May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Always Best Care of NY, LLC
Address:	Oakdale
County:	Suffolk
Structure:	Limited Liability Company
Application Number:	1944-L

Description of Project:

Always Best Care of NY, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Always Best Care of NY, LLC is an existing non-medical companion care agency seeking approval to become a licensed home care services agency. Always Best Care of NY, LLC operates under a franchise agreement with Always Best Care Senior Services.

The membership of Always Best Care of NY, LLC comprises the following individual:

Anthony D'Amico, 100%
Owner, Always Best Care of NY, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 3103 Wilshire Lane, Oakdale, New York 11769:

Nassau Suffolk

The applicant proposes to provide the following health care services:

Nursing Homemaker 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:	April 12, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	B & M School of Health Careers, Inc. d/b/a B & M Home Care
Address:	Brooklyn
County:	Kings
Structure:	For-Profit
Application Number:	1667-L

Description of Project:

B & M School of Health Careers, Inc. d/b/a B & M Home Care, 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:

Kethline Dacisse – RN – Chairman/Treasurer 100 Shares
Nurse Manager, Schulman and Schachne Institute for Nursing and Rehabilitation

Marcia Morgan Parker– RN – Vice-Chairman/Secretary 100 Shares
Administrator, Surfside Manor Home for Adults LHCSA d/b/a ExtraCare Home Care Agency
Supervisor, St. Mary's Hospital for Children

The Office of the Professions of the State Education Department, where appropriate, indicates no issues with the licensure of the health professionals associated with this application

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 455 Utica Avenue 2nd Floor, Brooklyn, New York 11203.

New York	Bronx	Queens
Kings	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care related 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 1, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Best Help Home Care Corp.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit
Application Number:	1623-L

Description of Project:

Best Help Home Care Corp, 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:

Mushe G. Kurayev – President – 200 shares
PCA, UJC of the Eastside Home Attendant Service Corp (12/24/1997 to 12/13/10)
Retired

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 in either Kings or Bronx County.

Kings Bronx

The applicant proposes to provide the following health care services:

Nursing Home Health Aide
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:	May 15, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: CareGivers by Design, Inc.
Address: Rye Brook
County: Westchester
Structure: For-Profit Corporation
Application Number: 1844-L

Description of Project:

CareGivers by Design, 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: Rosemary Paccione owns 90 shares, Maritza Molina owns 90 shares and Frank Paccione owns 20 shares.

The Board of Directors of CareGivers by Design, Inc. comprises the following individuals:

Rosemary Paccione, R.N., President, Secretary
Senior Director – Medical Quality Assurance, Pfizer, Inc.

Maritza Molina, M.D., Vice President
Primary Care Physician, Montefiore Medical Center
Medical Consultant, Matrix Medical Network
Physician, Belmont Medical Associates

Frank Paccione, Treasurer
Sales & Marketing, Crossmark (2007–2009)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 6 Milestone Road, Rye Brook, New York 10573:

Westchester Rockland

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care
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: May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Care Providers, Inc. d/b/a Home Helpers # 58319
Address:	College Point
County:	Queens
Structure:	For Profit Corporation
Application Number:	1765-L

Description of Project:

Care Providers, Inc. d/b/a Home Helpers # 58319, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Care Providers, Inc. d/b/a Home Helpers # 58319 is an existing non-medical companion care agency and a franchise.

Care Providers, Inc. d/b/a Home Helpers # 58319 has authorized 200 shares of stock which are owned as follows: 100 shares owned by Dina Hodara-Bono and 100 shares owned by Mordo Bono.

The members of the Board of Directors of Care Providers, Inc. d/b/a Home Helpers # 58319 comprise the following individuals:

Dina Hodara-Bono, President	Mordo Bono, Vice President
President, Home Helpers # 58319	Vice President, Home Helpers # 58319

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 1434 110th Street, Suite 205, College Point, New York 11356:

Queens	Kings	New York
Bronx	Richmond	Nassau

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:	April 12, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Caring Moments Homecare, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit Corporation
Application Number:	1919-L

Description of Project:

Caring Moments Homecare, 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:

Elsa Crick, R.N., 180 shares Administrator/Director of Patient Services, Lutheran Augustana Center	Bertram Crick, 20 shares Real Estate Broker, Val Cricks Real Estate

The Board of Directors of Caring Moments Homecare, Inc. comprises the following individuals:

Elsa Crick, R.N., President (disclosed above)	Bertram Crick, Vice President (disclosed above)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 847 Prospect Place, Brooklyn, New York 11216:

New York	Kings	Queens
Nassau	Bronx	Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the 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: May 11, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	CHDFS, Inc.
Address:	New York
County:	New York
Structure:	Not-For-Profit Corporation
Application Number:	1587-L

Description of Project:

CHDFS, 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 CHDFS, Inc. comprises the following individuals:

Nancy J. Parker – Chairman
Executive Manager, McMahon Publishing Group

Victoria Ceron – Secretary
Philanthropist

Lina Cohen – Treasurer
Global Marketing Director, Merck Inc & Co

Charlotte E. Howorth, LCSW – Director
Psychotherapist, Self-employed

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 307 West 38th Street, Suite 817, New York, New York 10018:

Bronx Kings New York Queens
Rockland

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Medical Social Services
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:	March 6, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Everyday Care, Inc.
Address:	New York
County:	New York
Structure:	For-Profit Corporation
Application Number:	1689-L

Description of Project:

Everyday Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: 66 shares owned by Joanna Y. Chan, 66 shares owned by Janelle Y. Chan and 66 shares owned by Josette Y. Chan. There are two remaining shares of stock which are unissued.

The Board of Directors of Everyday Care, Inc. comprises the following individuals:

Joanna Y. Chan, R.N., President
Administrator, Prestige Home Attendant d/b/a All Season Home Attendant

Janelle Y. Chan, M.D., Vice President
Resident Physician, Winthrop University Hospital

Josette Y. Chan, Secretary
Bookkeeper, Julian Splendor, LP

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 303 East 43rd Street, Apt. 8B, New York, New York 10017:

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 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: May 10, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Ideal Home Care Services, Inc.
Address:	Port Jefferson
County:	Suffolk
Structure:	For-Profit Corporation
Application Number:	1971-L

Description of Project:

Ideal Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Ideal Home Care Services, Inc. is an existing non-medical companion care agency.

The applicant has authorized 200 shares of stock which are owned solely by Marie Laborde, R.N.

The Board of Directors of Ideal Home Care Services, Inc. comprises the following individuals:

Carpenter Laborde, Chairperson
Airport Operations Services Supervisor,
Port Authority of NY & NJ

Margaret A. Goldstein, Vice Chairperson
Owner, Gotham Career Institute

Myrlande C. Geiselman, R. PhD., Secretary
Pharmacist, Health Relief Jobs

Karlyn Ulysse, Treasurer
Budget Coordinator, Pfizer

Marie N. Laborde, R.N., Administrator/CEO
Staff Nurse, Brookhaven Memorial Hospital

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 4 North Country Road, Port Jefferson, New York 11777:

Suffolk Nassau

The applicant proposes to serve the residents of the following counties from an office in Queens County:

New York Bronx Queens Richmond Kings

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	Medical Social Services	Nutrition
Homemaker	Housekeeper	

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 15, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	J & A Hurley, Inc. d/b/a Home Instead Senior Care
Address:	Schenectady
County:	Schenectady
Structure:	For-Profit Corporation
Application Number:	1969-L

Description of Project:

J & A Hurley, Inc., d/b/a Home Instead Senior Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Home Instead Senior Care is an existing non-medical companion care agency and a franchise. Home Instead Senior Care has a Franchise Agreement with Home Instead, Inc., a Nebraska corporation.

The applicant has authorized 200 shares of stock which are owned as follows:
100 shares owned by James E. Hurley and 100 shares owned by Araceli B. Hurley.

The Board of Directors of J & A Hurley, Inc. d/b/a Home Instead Senior Care comprises the following individuals:

James E. Hurley, President Franchise Owner, Home Instead Senior Care	Araceli B. Hurley, Vice President Franchise Owner, Home Instead Senior Care

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 650 Franklin Street, Suite 301, Schenectady, New York 12305:

Schenectady	Albany	Montgomery
Schoharie		

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: April 12, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	K & D Home Care, Inc.
Address:	Forest Hills
County:	Queens
Structure:	For-Profit Corporation
Application Number:	1706-L

Description of Project:

K & D Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows:

Julia Parnas, 140 shares	Wilkins Williams, M.D., 60 shares
Immigrant Community Liaison, NYS OTDA	Attending Physician, Interfaith Medical Center

The Board of Directors of K & D Home Care, Inc. comprises the following individual:

Julia Parnas, President	Wilkins Williams, Director
(disclosed above)	(disclosed above)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 103-11 68th Drive, Suite 2F, Forest Hills, New York 11375:

New York	Kings	Queens
Bronx	Richmond	Nassau

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: May 11, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Marks Homecare Agency of NY, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit Corporation
Application Number:	1923-L

Description of Project:

Marks 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:
Mariya Rudinskaya owns 100 shares and Shakhnoza Madaminova owns 100 shares.

The Board of Directors of Marks Homecare Agency of NY, Inc. comprises the following individuals:

Mariya Rudinskaya, R.N., President Director of Nursing, VIP Care, Inc. (New Jersey)	Shakhnoza Madaminova, Vice President Administrator, Best Home Care, Inc. (New Jersey)

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 New York State Education Department and the State of New Jersey Division of Consumer Affairs indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1311 Brightwater Avenue, Apt. 6D, Brooklyn, New York 11235:

New York	Kings	Queens
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the 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: May 10, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	PCDI Healthcare and Consultants of Texas, LLC
Address:	New York
County:	New York
Structure:	Limited Liability Company
Application Number:	1889-L

Description of Project:

PCDI Healthcare and Consultants of Texas, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

PCDI Healthcare and Consultants of Texas, LLC is currently operational as a home care services agency in Cedar Hill, Texas. The company wishes to expand its geographic operations into New York State.

PCDI Healthcare and Consultants of Texas, LLC is composed of the following member:

Anthony Wallace, 100%
Executive Administrator, PCDI Healthcare and Consultants of Texas, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 130 Williams Street, 5th Floor, New York, New York 10038:

New York	Bronx	Richmond
Kings	Queens	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Housekeeper	Respiratory Therapy	Medical Social Services
Nutrition		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Regina G. Yankey dba Orange Homecare and Staffing Agency
Address:	Middletown
County:	Orange
Structure:	Sole Proprietorship
Application Number:	1965-L

Description of Project:

Regina G. Yankey dba Orange Homecare and Staffing Agency, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Orange Homecare and Staffing Agency is:

Regina G. Yankey
PCA/Familycare Operator, Rockland Psychiatric Center

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 589 Silverlake Scotchtown Road, Middletown, New York 10941:

Orange	Rockland	Westchester	Putnam
Sullivan	Dutchess	Bronx	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	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: May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Safe Haven Home Care, Inc.
Address:	Brooklyn
County:	Kings
Structure:	For-Profit
Application Number:	1800-L

Description of Project:

Safe Haven 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 proposed Board Member of Safe Haven Home Care, Inc., comprises the following individual:

Rouandy Pascal, RN – President
Administrator/DPS of Long Term Home Health
Care Program, Personal Touch Home Care

The applicant has authorized 200 shares of stock, which are owned as follows:

Rouandy Pascal, RN – 200 Shares

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 10526 Flatlands 1st Street, Brooklyn, New York 11236:

Bronx	Kings	New York	Queens
Richmond			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Physical Therapy	Occupational Therapy	Housekeeper	Medical Social Services
Respiratory Therapy	Nutrition	Homemaker	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	May 10, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Queens Homecare Agency, Inc.
Address:	New York
County:	New York
Structure:	For-Profit Corporation
Application Number:	1937-L

Description of Project:

Queens Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Kwong Hing (Robert) Luk, HHA – Director
120 Shares
Director, Olia, Inc
Director, Queens Community Center.

Cathy Hui Lui – Director
80 Shares
Financial Advisor, HSBC

The Board of Directors of Queens Homecare Agency, Inc. comprises the following individuals:

Kwong Hing (Robert) Luk, HHA – Director
(Previously Disclosed)

Cathy Hui Lui – Director
(Previously Disclosed)

Ying Hsai Yang, RN – Director
Registered Nurse, Queens Community Center

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.

A search of the individual above on the New York State Home Care Registry revealed that the individual is certified as a Home Health Aide. Currently there is no indication that the person named above works as a HHA and has any convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 2 East Broadway Suite 808, New York, New York 11365:

Bronx Kings New York Queens Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Physical Therapy	Nutrition	Speech-Language Pathology
Homemaker	Housekeeper	Audiology	Respiratory Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	May 11, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI
Address:	Hicksville
County:	Nassau
Structure:	For Profit Corporation
Application Number:	1939-L

Description of Project:

Funzalo & Canteet, Inc., d/b/a Right at Home North Shore LI, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI is an existing non-medical companion care agency seeking approval to become a licensed home care services agency. Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI operates under a franchise agreement with Right at Home/RAH Staffing.

Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI has authorized 1500 shares of stock which are owned by Sandra P. Quartuccio (82 shares), Philip P. Quartuccio (82 shares), Funzalo & Canteet, Inc. 401(k) Plan F/B/O Sandra P. Quartuccio (660 shares) and Funzalo & Canteet, Inc. 401(k) Plan F/B/O Phillip P. Quartuccio (233 shares). 443 shares of stock remain unissued.

The members of the Board of Directors of Funzalo & Canteet, Inc., Inc. d/b/a Right at Home North Shore LI comprise the following individuals:

Sandra P. Quartuccio, Chairperson, Secretary and Treasurer	Phillip P. Quartuccio, Director
President and Owner, Funzalo & Canteet, Inc.	COO, Funzalo & Canteet, Inc.

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 28 E. Old Country Road, Hicksville, New York 11801:

Nassau	Suffolk	Queens

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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:	April 13, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Senior Comfort Solutions, LLC d/b/a Comfort Keepers
Address:	Plainview
County:	Nassau
Structure:	Limited Liability Company
Application Number:	1789-L

Description of Project:

Senior Comfort Solutions, LLC d/b/a Comfort Keepers, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Senior Comfort Solutions, LLC d/b/a Comfort Keepers is an existing non-medical companion care agency operating under a franchise agreement with CK Franchising, Inc.

Senior Comfort Solutions, LLC d/b/a Comfort Keepers is composed of the following member:

Susan Margulies, sole member and manager (100%)
President, Senior Comfort Solutions, LLC d/b/a Comfort Keepers

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 8 Manetto Hill Road, Suite 1, Plainview, New York 11803:

Nassau Suffolk

The applicant proposes to provide the following health care services:

Nursing Homemaker 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: April 12, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	T. A. Daniels Holdings, Inc. d/b/a Senior Helpers
Address:	Rye Brook
County:	Westchester
Structure:	For-Profit Corporation
Application Number:	1973-L

Description of Project:

T. A. Daniels Holdings, Inc., d/b/a Senior Helpers, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. T. A. Daniels Holdings, Inc. d/b/a Senior Helpers is an existing non-medical companion care agency and a franchise. T. A. Daniels Holdings, Inc. d/b/a Senior Helpers has a Franchise Agreement with S. H. Franchising, LLC. T. A. Daniels Holdings, Inc. d/b/a Senior Helpers also operates in Connecticut and New Jersey.

The applicant has authorized 200 shares of stock which are owned as follows: T. A. Daniels Holdings Retirement Plan owns 158 shares and Timothy A. Daniels owns 5 shares. The remaining 37 shares of stock remain unissued.

The Board of Directors of T. A. Daniels Holdings, Inc. d/b/a Senior Helpers comprises the following individuals:

Timothy A. Daniels, President President, Senior Helpers	Cynthia M. Daniels, Secretary, Treasurer Corporate Director, Senior Helpers

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 Westchester County from an office located at 800 Westchester Avenue, Suite 641N, Rye Brook, New York 10573.

The applicant proposes to provide the following health care services:

Nursing	Personal Care
Homemaker	Housekeeper

A review of the following companion agencies was performed as part of this review:

T. A. Daniels Holdings, Inc. d/b/a Senior Helpers in Connecticut
T. A. Daniels Holdings, Inc. d/b/a Senior Helpers in New Jersey

The State of Connecticut replied that they do not have compliance reports for homemaker companion agencies.

The State of New Jersey replied that they cannot supply compliance information.

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: May 15, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Tayler Ashley Group, Inc. d/b/a Senior Helpers
Address:	Hopewell Junction
County:	Dutchess
Structure:	For-Profit Corporation
Application Number:	1975-L

Description of Project:

Tayler Ashley Group, Inc., d/b/a Senior Helpers, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Tayler Ashley Group, Inc. d/b/a Senior Helpers is an existing non-medical companion care agency and a franchise. Tayler Ashley Group, Inc. d/b/a Senior Helpers has a Franchise Agreement with S. H. Franchising, LLC in effect since October 17, 2007.

The applicant has authorized 20,000 shares of stock which are unissued.

The Board of Directors of Tayler Ashley Group, Inc. d/b/a Senior Helpers comprises the following individuals:

Timothy D. Hopkins, Chairman CEO, Tayler Ashley Group, Inc. d/b/a Senior Helpers	Jayruther Hopkins, Treasurer Retired

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 2537 Route 52, Building 3, Suite 11, Hopewell Junction, New York 12533:

Dutchess	Orange	Putnam	Sullivan	Ulster
Westchester				

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: April 17, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	TriMed Home Care Services, Inc.
Address:	Hewlett Bay Park
County:	Nassau
Structure:	For-Profit Corporation
Application Number:	1961-L

Description of Project:

TriMed Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows:

Vinod Sinha, 80 shares
Administrator, South Island Medical Associates, P.C.
Administrator, Total Med Biz.Com, Inc.

Nalini Sinha, 60 shares
Senior VP, Total Med Biz.Com, Inc.

Natasha Sinha, 20 shares
Assistant to Artistic Director, Barrington Stage Company (creative artists agency)

Varsha Sinha, 20 shares
unemployed

Vishal Sinha, 20 shares
unemployed

The Board of Directors of TriMed Home Care Services, Inc. comprises the following individuals:

Vinod Sinha, President
(disclosed above)

Nalini Sinha, Vice Pres., Secretary & Treasurer
(disclosed above)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 49 Piermont Avenue, Hewlett Bay Park, New York 11557:

Nassau Suffolk

The applicant proposes to serve the residents of the following counties from an office located at 90-09 Rockaway Beach Boulevard, Rockaway Beach, New York 11692:

Kings	New York	Richmond
Bronx	Queens	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Speech Language Pathology
Nutrition	Medical Social Services	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: May 10, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Your Choice Homecare Agency, Inc.
Address:	Rego Park
County:	Queens
Structure:	For-Profit Corporation
Application Number:	1922-L

Description of Project:

Your Choice Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Ivan Laptev owns 66.67 shares, Viktar Lobach owns 66.67 shares and Dmitry Boldusov owns 66.67 shares.

The Board of Directors of Your Choice Homecare Agency, Inc. comprises the following individuals:

Ivan Laptev, President
Home Health Aide
Driver, Approved Transportation Service, Inc.

Viktar Lobach, Director
Director, Delta LDK, Ltd.
(2007 – 2011)

Dmitry Boldusov, Director
Director, ODO Icar Service Group

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 97-50 Queens Boulevard, Apt. E6, Rego Park, New York 11374:

New York Kings Queens Bronx Richmond Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the 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: May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Steuben County Public Health & Nursing Services
Address:	Bath
County:	Steuben
Structure:	Public
Application Number:	2113-L

Description of Project:

The Steuben County Public Health & Nursing Services, a government subdivision of Steuben County, 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 and a long term home health care program which the applicant proposes to close and transfer to Visiting Nursing Association of Western New York, Inc.. Steuben County Public Health & Nursing Services is requesting approval to open a licensed home care services agency to enable the county to continue to providing essential public health nursing services.

The applicant proposes to serve the residents of Steuben County from an office located at:
3 East Pulteney Square, Bath, New York 14810.

The applicant proposes to provide the following health care services:

Nursing

Steuben County currently operates the Steuben County Health Care Facility (residential health care facility) and Steuben County Public Health & Nursing Services Diagnostic and Treatment Center.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed 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 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:	May 15, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Parent Care, LLC
Address:	Brooklyn
County:	Kings
Structure:	Limited Liability Company
Application Number:	1976-L

Description of Project:

Parent Care, LLC, a limited liability company, requests approval for a change in ownership of Parent Care Home Care, LLC, an existing and operating licensed home care services agency, under Article 36 of the Public Health Law.

Parent Care Home Care, LLC was previously approved as a licensed home care services agency by the Public Health Council at its May 13, 2005 meeting and subsequently licensed as 1284L001. The proposed transaction would transfer ownership to Parent Care, LLC, consisting of the following two members:

Moshe Gruner, 50%	Abraham Stern, 50%
Assistant Administrator, Parent Care, LLC	Assistant Administrator, Parent Care, LLC

Upon Public Health and Health Planning Council approval of the proposed change in ownership, Parent Care, LLC plans to change its name to Parent Care Home Care, LLC.

Parent Care Home Care, LLC currently operates under a Management Contract with Parent Care, LLC approved by the Department on June 21, 2010.

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: 129 South 8th Street, Brooklyn, New York 11211:

Kings	Queens	Bronx
Richmond	New York	Nassau

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:	May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency: SeniorBridge Family Companies (NY), Inc.
Address: New York
County: New York
Structure: For-Profit
Application Number: 2099L

Description of Project:

SeniorBridge, Family Companies (NY), Inc., a business corporation, requests approval for a transfer/acquisition of the ultimate control of their licensed home care services agency under Article 36 of the Public Health Law.

SeniorBridge Family Companies (NY), Inc. was previously approved as a licensed home care services agency by the Public Health Council at its November 14, 2008 meeting and subsequently licensed as 1726L001 through 1726L006.

The purpose of this proposal is to transfer the ownership of the SeniorBridge Family Companies, Inc., the parent corporation of Seniorbridge Family Companies (NY), Inc., to Humana, Inc. The stock of SeniorBridge Family Companies (NY), Inc. is wholly owned by SeniorBridge, Family Companies, Inc. Upon completion of transaction Humana, Inc. will become the sole shareholder of SeniorBridge Family Companies, Inc.

The applicant has authorized 300,000,000 shares of stock, 192,804,649 shares have been issued. The remaining 107,195,351 remain unissued.

The Board of Directors of Humana, Inc. comprises the following individuals:

Michael B. McCallister - Chairman
Chief Executive Office, Humana, Inc.

Humana, Inc.	Chair of the Board	2/2000 - Present
American Dental Plan of NC	Director	
American Dental Plan of Ark	Director	
CompBenefits Company	Director	
CompBenefits Corporation	Director	
CompBenefits Direct, Inc.	Director	
CompBenefits Insurance Comp	Director	
CompBenefits of Alabama	Director	
CompBenefits of Georgia	Director	
DefenseWeb Tech	Director	
Dental Care Plus Management	Director	
DentiCare, Inc.	Director	
HomeCare Health Solutions, Inc.	Director	
Humana Dental Company	Director	
Humana Government Network Services	Director	
Humana MarketPOINT of Puerto Rico	Director	
Humana MarketPOINT, Inc.	Director	
Humana Military Dental Services, Inc.	Director	
Humana Military Healthcare Services, Inc.	Director	
Humana Veterans Healthcare Services, Inc.	Director	
Humana Dental Insurance Comp	Director	
Humana Dental Inc.	Director	
Texas Dental Plans, Inc.	Director	
The Dental Concern, Inc.	Director	

The Dental Concern, Ltd	Director
CAC-Florida Medical Ctr	Manager-Chairman
Careplus Health Plans	Director-Chairman
CPHP Holdings	Director-Chairman
Health Value Management	Director-Chairman
HUM INT, LLC	President, CEO Manager
Humana, Inc.	CED, Chairman
Humana, Inc.-Executive Committee	Executive Committee Member
Humana Wellworks LLC	President, CEO, Manager
Hummingbird Coaching Systems	President, CEO, Manager
Kanawha Healthcare Solutions	Chairman, Director
The Humana Foundation	Chairman, President, CEO, Director

Frank A. D'Amelio – Director
Executive Vice President Business Operations, Chief Financial Officer

Humana, Inc.	Director	9/2003 - Present

Roy W. Dunbar – Director
Chief Executive Officer/President, NetworkSolutions, LLC

Humana, Inc.	Director	4/2005 - Present

Kurt J. Hulzinger – Lead Director
Partner, Court Square Capital Partners, LP

Humana, Inc.	Director	7/2003 - Present

David A Jones, Jr. – Director
Chairman and Managing Director, Chrysalis Ventures, Inc.

Humana, Inc.	Director	05/1993 - Present
Connecture - GA	Director	03/2009 - Present
Laboratory Partners	Director	07/2005 - Present
Myhealth Direct - WI	Director	12/2009 - Present
Sanovia - PA	Director	04/2009 - Present
Achieve CCA - KY	Director	02/2009 - 7/2011
Asterand - MI	Director	10/2003 - 09/2008
HCCA - TN	Director	09/2008 - 07/2010
Inoveon - OK	Director	10/2002 - 09/2006

William J. McDonald – Director
Executive Vice President, Brand Management, Capital One Financial Corporation

Humana, Inc.	Director	10/2007-Present

William E. Mitchell – Director
Managing Partner, Sequel Capital Management, LLC

Humana, Inc.	Director	4/2009 - Present

David B. Nash, MD – Director
Founding Dean of Jefferson School of Population Health, Thomas Jefferson University

Humana, Inc.	Director	1/2010 – Present
Medical Physician and Surgeon	Pennsylvania	1982 – Present

James O'Brien – Director
Chairman of the Board and Chief Executive Officer, Ashland, Inc.,
President and Chief Operating Office, Ashland, Inc.

Humana, Inc.	Director	4/2006 – Present

Marissa T. Peterson – Director

Humana, Inc.	Director	8/2008 – Present
Lucile Packard Children's Hospital - CA	Director	1/2003 – Present

SeniorBridge Family Companies, Inc. has authorized 110,000,000 shares of stock with 29,586,113 shares have been issued.

The Board of Directors of SeniorBridge Family Companies, Inc. comprises the following individuals:

Michael B. McCallister – Director
Previously Disclosed

Steven E. McCulley – Director
Vice President & Controller, Humana, Inc,

Humana Innovation Enterprises	Vice-President & Controller	10 years
Humana Insurance Company of New York	Director	
HUMphire, Inc	Director	
CAC-Florida Medical Centers, LLC	Vice-President & Controller	
Preservation on Main, Inc.	Vice-President & Controller	
516-526 West Main Street Condominium of the Co-Owners, Inc.	Vice-President & Controller	

James E Murray – Director
Chief Operating Officer, Humana, Inc.

Humana, Inc.	Director	10/98-Present
516-526 W, Main St Condominium Council Co-Owners	Director	
American Dental Plan of North Carolina	Director	
American Dental Plan of Arkansas	Director	
CareNetwork, Inc.	Director	
CarePlus Health Plans Inc.	Director	
Cariten Health Plan Inc.	Director	
Cariten Insurance Company	Director	
CHA HMO	Director	
CHA Service Company	Director	
CompBenefits Company	Director	
CompBenfits Corporation	Director	
CompBenefits Dental	Director	
CompBenefits Direct, Inc.	Director	
CompBenefits Insurance Comp	Director	
CompBenefits of Alabama	Director	
CompBenefits of Georgia	Director	
Competitive Health Analytics	Director	
Corphealth, Inc.	Director	
CPHP Holdings Inc.	Director	
DefenseWeb Tech Inc.	Director	
Dental Care Plus Management	Director	
DentiCare, Inc.	Director	
Emphesys Insurance Company	Director	
Emphesys Inc.	Director	
HomeCare Health Solutions, Inc.	Director	
HUMA Inc.	Director	
HUM-e-FL Inc.	Director	
Humana Active Outlook Inc.	Director	
Humana AdvantageCare Plan Inc.	Director	
Humana Benefit Plan of Illinois	Director	
Humana Dental Company	Director	

Humana Europe, Ltd	Director
Humana Government Network Services	Director
Humana Health Benefits Plan of Louisiana	Director
Humana Health Insurance Company of Florida	Director
Humana Health Plan Interest Inc.	Director
Humana Health Plan of California	Director
Humana Health Plan of Ohio	Director
Humana Health Plan of Texas	Director
Humana Health Plan Inc	Director
Humana Innovation Enterprise	Director
Humana Insurance Company of Kentucky	Director
Humana MarketPOINT of Puerto Rico	Director
Humana MarketPOINT Inc.	Director
Humana Medical Plan Inc.	Director
Humana Plan of Michigan	Director
Humana Plan of Pennsylvania	Director
Humana Plan of Utah	Director
Humana Military Dental Services Inc.	Director
Humana Military Healthcare Services Inc.	Director
Humana Pharmacy Inc.	Director
Humana Pharmacy Solutions	Director
Humana Veteran Healthcare Services Inc.	Director
Humana Wisconsin Health Care Organization Insurance Corp	Director
HumanCares Inc.	Director
Hunan Dental Insurance Comp	Director
Humana Dental Inc.	Director
Humco Inc.	Director
Humsol Inc.	Director
Humedium, Inc.	Director
Kanawha Healthcare Solutions	Director
Kanawha Insurance Company	Director
KMG American Corporation	Director
PHP Companies	Director
Preferred Health Partnership of Tennessee	Director
Preferred Health Partnership	Director
Preservation Health Partnership	Director
Preservation of Main, Inc.	Director
Sensei, Inc.	Director
Texas Dental Plans Inc.	Director
The Dental Concerns, Inc.	Director
The Dental Concern Ltd.	Director
CAC-Florida Medical Centers, LLC	Manager
Corp Provider Link	President
Humana Health Plans of Puerto Rico Inc.	Chairman
Humana Inc.	CFO
Humana Insurance Company of NY	COO, Director
Humana Insurance Company of Puerto Rico	Chairman
Humana Wellworks LLC	Manager
Humana Vitality	President, Manager
Hummingbird Coaching Systems, LLC	Manager

SeniorBridge Family Companies (NY), Inc. has authorized 10,000 shares of stock, which are owned as follows.

SeniorBridge Family Companies, Inc. – 100 shares. The remaining 9.900 shares are unissued.

The Board of Directors of SeniorBridge Family Companies (NY), Inc. comprises the following individuals:

Lawrence I. Sosnow – Director and Secretary Chairman, SeniorBridge Companies, Inc.	Eric C. Rackow, M.D. – Director and Treasurer President, and Chief Executive Officer, SeniorBridge Companies, Inc.

SeniorBridge Family Companies, Inc. and SeniorBridge Family Companies (NY), Inc. are exempt from character and competence review due to the fact that these entities were previously approved by the Public Health Council for this operator.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professional associated with this application.

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 Certificate of Good Standing has been received for the attorneys.

The applicant will continue to provide the following health care services from the offices identified below.

Nursing	Home Health Aide	Personal Care
Medical Social Services	Homemaker	Housekeeper

The applicant will continue to serve the residents of the following counties from offices located at:

1726L001 845 3rd Avenue. 7th Floor, New York, New York 10022

Bronx	Kings	New York
Queens	Richmond	Westchester

1726L002 1010 Northern Blvd, Ste 20 B, Great Neck, New York 11201

Nassau	Suffolk

1726L003 445 Hamilton Avenue Suite 1041-1054, White Plains, New York 10601

Putnam	Rockland	Westchester	Bronx

1726L004 97-77 Queens Boulevard, Rego Park, New York 11374

Bronx	Kings	New York
Queens	Richmond	Nassau

1726L005 68 Jay Street 2nd Floor, Brooklyn, New York 11201

Bronx	Kings	New York
Queens	Richmond	Nassau

1726L006 147 Merrick Road, Freeport, New York 11521

Nassau	Suffolk	Queens

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- 740139 Concentra Health Services, Inc. (2002-present) KY-Special Health Clinic
- 740168 Concentra Health, Inc. (2002-present) KY-Special Health Clinic
- 100856 Concentra Health Services, Inc. (2002-present) KY-Rehabilitation Agency
- 101115 Concentra Health Services, Inc. (2002-present) KY-Rehabilitation Agency
- OTC 0268 Concentra Medical Ctr. West (2006-present) AZ-Outpatient Treatment Facility
- OTC 0202 Concentra Medical Ctr. Tempe (2006-present) AZ-Outpatient Treatment Facility
- OTC 0557 Concentra Medical Ctr. Val Vista (2006-present) AZ- Outpatient Treatment Facility
- OTC 3903 Concentra Medical Ctr. Metro (2006-present) AZ- Outpatient Treatment Facility
- OTC 0472 Concentra Medical Ctr. Airport Sky Harbor (2006-present) AZ- Outpatient Treatment Facility
- OTC 3925 Advanced Medical Specialist of Arizona (2006-present) AZ- Outpatient Treatment Facility
- OTC 0679 Concentra Medical Ctr. Mesa (2006-06/09) AZ- Outpatient Treatment Facility
- OTC 4598 Concentra Medical Ctr. Northwest (2006-present) AZ- Outpatient Treatment Facility
- OTC 4847 Concentra Medical Ctr. Flagstaff (2006-present) AZ- Outpatient Treatment Facility
- OTC 3153 Concentra Medical Ctr. North (2006-present) AZ- Outpatient Treatment Facility
- OTC 0295 Concentra Medical Ctr. South (2006-present) AZ- Outpatient Treatment Facility
- OTC 3021 Concentra Medical Ctr. Central (2006-present) AZ- Outpatient Treatment Facility
- Lucile Parkard Children's Hospital (2003-present) CA

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: May 9, 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 7th day of June, 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:
1633-L	320 MacDougal Street, Inc. (Bronx, Richamond, Kings, Queens, Nassau and New York Counties)
1712-L	Aide and Comfort, Inc. (Nassau, Suffolk, Westchester, Rockland, Queens, New York, Bronx, Kings, and Richmond Counties)
1688-L	Alissa Home Care, Inc. (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)
1944-L	Always Best Care of NY, LLC (Nassau and Suffolk Counties)
1667-L	B & M School of Health Careers, Inc. (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)
1623-L	Best Help Home Care Corp. (Kings and Bronx Counties)

1844-L	CareGivers by Design, Inc. (Westchester and Rockland Counties)
1765-L	Care Providers, Inc. d/b/a Home Helpers #58319 (Queens, Bronx, Kings, Richmond, New York, and Nassau Counties)
1919-L	Caring Moments Homecare, Inc. (New York, Nassau, Kings, Bronx, Queens, and Richmond Counties)
1587-L	CHDFS, Inc. (Bronx, Rockland, Kings, New York, and Queens Counties)
1689-L	Everyday Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
1986-L	Good Samaritan CareGivers, Inc., d/b/a Good Samaritan Home Health Agency (Allegany, Erie, Niagara, Cattaraugus, Genesee, Orleans, Chautauqua, Monroe, and Wyoming Counties)
1971-L	Ideal Home Care Services, Inc. (Suffolk, Nassau, New York, Bronx, Queens, Richmond and Kings Counties)
1969-L	J & A Hurley, Inc. d/b/a Home Instead Senior Care (Schenectady, Schoharie, Albany and Montgomery Counties)
1856-L	Life's Changing Seasons Eldercare, LLC (Onondaga, Oswego, Seneca, Cayuga, Cortland, Oneida, Madison and Tompkins Counties)
1706-L	K & D Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
1923-L	Marks Homecare Agency of NY, Inc. (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)
1798-L	NurseCore Management Services – New York, LLC (Livingston, Monroe, Ontario and Wayne Counties)

1889-L	PCDI Healthcare and Consultants of Texas, LLC (New York, Kings, Bronx, Queens, Richmond and Nassau Counties)
1965-L	Regina G. Yankey d/b/a Orange Homecare and Staffing Agency (Orange, Sullivan, Rockland, Dutchess, Westchester, Bronx, and Putnam Counties)
1800-L	Safe Haven Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)
1937-L	Queens Homecare Agency, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties)
1939-L	Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI (Nassau, Suffolk, and Queens Counties)
1789-L	Senior Comfort Solutions, LLC d/b/a Comfort Keepers (Nassau and Suffolk Counties)
1977-L	Sephardic Home Care Services, Inc. (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)
1973-L	T.A. Daniels Holdings, Inc. d/b/a Senior Helpers (Westchester County)
1975-L	Tayler Ashley Group, Inc. d/b/a Senior Helpers (Dutchess, Westchester, Orange, Putnam, Sullivan, and Ulster Counties)
1961-L	TriMed Home Care Services, Inc. (Nassau and Suffolk Counties)
1922-L	Your Choice Homecare Agency, Inc. (New York, Westchester, Kings, Queens, Bronx and Richmond Counties)
2113-L	Steuben County Public Health & Nursing Services (Steuben County)
1976-L	Parent Care, LLC (Kings, Richmond, Queens, New York, Bronx, and Nassau Counties)

2099-L	SeniorBridge Family Companies (NY), Inc. (See exhibit for counties listed)
2033-L	Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care (Niagara County)
2112L	CL Healthcare, Inc. (Bronx County)

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

June 7, 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

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #12**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112042 B	The Chautauqua Center (Chautauqua County) Mr. Booth - Interest	Contingent Approval

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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121049 E	Lewis County Hospice (Lewis County) Mr. Booth - Interest	Approval

Residential Health Care Facility – Establish **Exhibit #14**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	112156 E	Parkview Operating Co., d/b/a Westchester Center for Rehabilitation & Nursing (Westchester County) Mr. Fensterman - Recusal	Contingent Approval

Certified Home Health Agencies – Establish **Exhibit #15**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121018 E	Lewis County General Hospital d/b/a Lewis County General Hospital Certified Home Healthcare Agency (Lewis County) Mr. Booth - Interest	Approval
2.	121219 E	L. Woerner, Inc. d/b/a HCR (Clinton County) Mr. Booth – Interest Ms. Hines - Interest	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #16**

Number	Applicant/Facility	E.P.R.C. Recommendation
1986-L	Good Samaritan CareGivers, Inc., d/b/a Good Samaritan Home Health Agency (Allegany, Erie, Niagara, Cattaraugus, Genesee, Orleans, Chautauqua, Monroe, and Wyoming Counties) Mr. Booth – Interest Ms. Hines – Interest	Contingent Approval
1856-L	Life's Changing Seasons Eldercare, LLC (Onondaga, Oswego, Seneca, Cayuga, Cortland, Oneida, Madison and Tompkins Counties) Mr. Booth – Interest	Contingent Approval
1798-L	NurseCore Management Services – New York, LLC (Livingston, Monroe, Ontario and Wayne Counties) Mr. Booth – Interest Ms. Hines – Interest	Contingent Approval

1977-L	Sephardic Home Care Services, Inc. (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties) Mr. Fassler – Interest	Contingent Approval
2033-L	Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care (Niagara County) Mr. Booth – Interest	Contingent Approval
2112L	CL Healthcare, Inc. (Bronx County) Mr. Fassler - Recusal	Contingent Approval

Public Health and Health Planning Council

Project # 112042-B

The Chautauqua Center

County: **Chautauqua (Dunkirk)** ***Program:*** **Diagnostic and Treatment Center**
Purpose: **Establishment and Construction** ***Submitted:*** **July 22, 2011**

Executive Summary

Description

The Chautauqua Center, Inc. (TCC), an existing not-for-profit corporation, requests approval to establish and construct a diagnostic and treatment center (D&TC) to be located on the ground floor at 314 Central Avenue, Dunkirk. The outpatient services proposed to be certified at the D&TC are as follows: Chemical Dependence - Rehabilitation, Clinical Laboratory Services, Family Planning, Health Fairs, Medical Social Services, Pediatrics, Prenatal, Primary Medical Care, Psychology and Well-Child.

Total project costs are estimated at $174,687.

DOH Recommendation

Contingent approval.

Need Summary

The Chautauqua Center, Inc. (TCC) proposes to provide primary care services in a community that has been designated as Health Professional Shortage Area (HPSA) for primary care, dental, and mental health services. Chautauqua County has also been designated as a Medically Underserved Area (MUA) for Low Income populations.

TCC has applied for Federally Qualified Health Center (FQHC) designation to serve this rural community, which has had three Article 28 clinics close in the past 10 years.

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 funded with $130,410 from the federal New Access Point application grant, $30,000 in a grant from the Community Health Foundation of Western and Central New York, and $14,277 in a donation from the Chautauqua County Health Network.

Budget:	*Revenues:*	*$ 1,756,801*
	Expenses:	*1,733,512*
	Gain/(Loss):	*$ 23,829*

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

Architectural Summary

The applicant is requesting approval to construct a new diagnostic and treatment center, to be located on the ground floor of an existing four-story commercial building in Dunkirk. The new clinic will be the sole tenant on that floor and will involve approximately 4,750 SF of renovation.

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of documentation of the New Access Point Application grant from the Federal Government for Project Costs and Working Capital acceptable to the Department of Health. [BFA]
4. Submission of documentation of the Community Health Foundation of Western and Central New York grant acceptable to the Department of Health. [BFA]
5. Submission of documentation of the Chautauqua County Health Network donation acceptable to the Department of Health. [BFA]
6. Submission of an executed Billing Agreement acceptable to the Department of Health. [BFA, CSL]
7. Submission of an executed Building Lease Agreement acceptable to the Department of Health. [BFA, CSL]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
9. Submission of an executed copy of the Amended and Restated Certificate of Incorporation that is acceptable to the Department. [CSL]
10. Submission of amended bylaws that are acceptable to the Department. [CSL]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
6. The applicant shall complete construction by June 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
June 7, 2012.

Need Analysis

Background

The Chautauqua Center, Inc. (TCC), an existing, New York State, not-for-profit corporation, is seeking approval for the establishment and construction of a diagnostic and treatment center (D&TC) to be located at 314 Central Avenue, Dunkirk.

Analysis

The service area for the proposed project includes northern Chautauqua County. TCC will serve all underserved populations in the County, but its primary focus will be on the large, low-income population and the growing Hispanic/Latino population.

The number of projected visits is as follows:

Current:	0
First Year:	5,490
Third Year:	15,192

Chautauqua County has three D&TCs, five D&TC Extension Clinics, and one School-Based Health Clinic.

Chautauqua County Health Indicators

The table below presents information on selected family planning and maternal and child health indicators for Chautauqua County and New York State for 2007-09. These indicators for the County are unfavorable when compared with those of the State as a whole.

Selected Health Indicators for Chautauqua County and NYS, Average 2007-09	*Chautauqua County*	*New York State*
Late or No Prenatal Care (% of Live Births)	6.9%	5.6%
Early Prenatal Care (% of Live Births)	69.1%	73.0%
Low Birthweight - < 2500 Gms. (% of Live Births)	8.4%	8.2%
Infant Mortality (Rate per 1,000 Live Births)	7.8	5.4
Teenage Births: Age 15-17 (% of Live Births)	3.5%	2.0%
Teenage Births: Age 15-17 (Rate per 1,000 Females Age 15-17)	17.4	12.8

Source: NYSDOH Community Health Data Sets-CHDS

In 2009, Chautauqua County had 184 FTE physicians per 100,000 population, versus 304 FTE physicians per 100,000 population for New York State overall.

Conclusion

The proposed D&TC will improve access to care for communities that have HPSA and MUA designations and will provide improved access to primary and preventive care and chronic disease management.

Recommendation

From a need perspective, approval is recommended.

Program Proposal
Establish a diagnostic and treatment center which will then seek to become a Federally Qualified Health Center.

Proposed Operator	**The Chautauqua Center**
Operator Type	Not-for-profit corporation
Site Address	314 Central Avenue, Dunkirk
Services	Primary Medical Care Chemical Dependence Rehabilitation Clinical Laboratory Services Family Planning Health Fairs Medical Social Services Pediatrics Prenatal Psychology Well-Child
Hours of Operation	46 hours per week
Staffing (1st Year / 3rd Year)	7.57 FTEs / 16.00 FTEs
Medical Director(s)	Tat-Sum Lee, M.D.
Emergency, In-Patient and Backup Support Services Agreement	Expected to be provided by Brooks Memorial Hospital for general medical services and TLC Health Network (Lakeshore Hospital) for behavioral health services
Distance	Brooks: 0.3 miles and 1 minute Lakeshore: 12.6 miles and 24 minutes

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 Board Members/Officers are:

Name	
Richard Alexander	Chair; Member
Janet Privitera-Bonasera	Vice Chair; Member
Ann Abdella	Secretary; Member
Sue Sosinski	Member
Debra Pacos	Member
Carol Kozlowski	Member
Eloy Bautista	Member
Sixto Rosario	Member
Elana Bautista	Member
Roberta Keller	Member
Jim Merrins, Ed.D.	Member

The board consists of a wide array of active community members including the executive director of a rural health network, the Director of Ancillary and Outpatient Services at TLC Health Network, a migrant outreach specialist, the executive director of a community action agency and a school district administrator.

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.

TLC Health Network - Lake Shore Hospital:

Date	Stip	Fine	Facility	Survey	Description of Case
2004	05-06H	$16,000.00	TLC Health Network - Lake Shore Hospital	Incident	Based on the investigation of an occurrence where a cardiac patient arrested and died. It was discovered that the cardiac alarms had been disconnected by hospital staff.

TLC Health Network Lake Shore Hosp Nursing Facility:

Survey Date	Deficiency Category	Stipulation and Order Number	Stipulation and Order Date	Fine Assessed
July 17, 2009	Multiple Deficiencies	NH-10-031	September 13, 2010	$4,000
June 27, 2002	Quality of Care	NH-03-006	January 24, 2003	$2,000

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

Billing Agreement

The Chautauqua Center will enter into a billing agreement summarized below:

Contractor:	Practice Management Center
Client:	The Chautauqua Center
Services to be Provided:	Medical billing and accounts receivable management
Terms:	Two years with additional one year term automatic renewals
Fee:	$5.00 per CPT code and $1.50 for each impending bad debt letter mailed. Budgeted year one and year three billing fee is $27,450 and $75,960, respectively.

Lease Agreement

The applicant will lease approximately 4,722 square feet located on the ground floor at 314 Central Avenue, Dunkirk under the terms of the draft lease agreement summarized below:

Landlord:	Graf Building, LLC
Tenant:	The Chautauqua Center
Term:	10 year term with two five year options to renew
Rental:	$84,996 ($18/sq. ft.) for the first year and 2% increase each year under term
Provisions:	Triple Net

The applicant has indicated that the lease will be an arm's length lease arrangement. Letters of opinion from license commercial real estate brokers have been submitted indicating rent reasonableness.

Project Cost

Total project costs for movable equipment are estimated at $174,687, broken down as follows:

Movable Equipment	$122,660
Other Fees (Consultant)	50,000
CON Application Fee	1,250
CON Additional Processing Fee	777
Total Project Cost	$174,687

The applicant will finance the total project costs as follows:

New Access Point Application grant	$130,410
Community Health Foundation of Western and Central New York grant	$30,000
Chautauqua County Health Network donation	$14,277

Operating Budget

The applicant has submitted an Incremental operating budget in 2012 dollars, for the first and third years of operation, summarized below:

	Year One	Year Three
Revenues:*	$ 927,297	$1,756,801
Expenses:		
Operating	$ 803,211	$1,624,091
Depreciation and Rent	105,987	109,421
Total Expenses	$ 909,198	$1,733,512
Net Income	$18,099	$23,289
Utilization: (visits)	5,490	15,192
Cost Per Procedure	$165.61	$114.11

** Revenues include monies from the New Access Point Application Grant of $527,340 and $650,000 for the first and third years, respectively.*

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

	First Year and Third Year
Commercial Insurance-Managed Care	15.0%
Medicare Fee-For-Service	7.0%
Medicare Managed Care	3.0%
Medicaid Fee-For-Service	7.0%
Medicaid Managed Care	38.0%

Self Pay	20.0%
Charity Care	10.0%

Expense and utilization assumptions are based on the historical experience of other providers in New York State.

Capability and Feasibility

The project costs of $174,687 will be met with $130,410 in a New Access Point Application grant from the Federal Government, $30,000 in a grant from the Community Health Foundation of Western and Central New York and $14,277 in a donation from the Chautauqua County Health Network.

Working capital requirements, estimated at $288,919, appear reasonable based on two months of third year expenses. The applicant will finance 100% via the New Access Point Application Grant. Presented as BFA Attachment A is the pro forma balance sheet of TCC as of the first day of operation, which indicates a positive net asset position of $470,661.

The submitted budget indicates a net income of $18,099 and $23,289 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; and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Architectural Analysis

Review Summary

- Ground floor (4,750 sf renovation)

The ground floor will consist of approximately 4,750 sf of renovation and will include a waiting room with public toilet rooms, reception area, offices, 12 exam rooms, nurse station, lab, patient and staff toilet rooms, staff break room, clean utility room, soiled utility room, and other storage rooms.

Environmental Review:

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

Recommendation

From an architectural perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Pro Forma Balance Sheet
BFA Attachment B	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 7th day of June, 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 diagnostic and treatment center at 314 Central Avenue, Dunkirk, 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:
112042 B	The Chautauqua Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of forty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of documentation of the New Access Point Application grant from the Federal Government for Project Costs and Working Capital acceptable to the Department of Health. [BFA]
4. Submission of documentation of the Community Health Foundation of Western and Central New York grant acceptable to the Department of Health. [BFA]
5. Submission of documentation of the Chautauqua County Health Network donation acceptable to the Department of Health. [BFA]
6. Submission of an executed Billing Agreement acceptable to the Department of Health. [BFA, CSL]
7. Submission of an executed Building Lease Agreement acceptable to the Department of Health. [BFA, CSL]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
9. Submission of an executed copy of the Amended and Restated Certificate of Incorporation that is acceptable to the Department. [CSL]
10. Submission of amended bylaws that are acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of Final Construction Documents, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the start of construction. [AER]
6. The applicant shall complete construction by June 30, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Hedley Building - 6th Floor
433 River Street
Troy, New York 12180-2299

Public Health and Health Planning Council

Project # 121049-E

Lewis County Hospice

County: **Lewis (Lowville)**
Purpose: **Establishment**

Program: **Hospice Services**
Submitted: **January 26, 2012**

Executive Summary

Description

Lewis County Public Health, the current operator of the Lewis County Hospice, an existing Article 40, not-for-profit public corporation, is seeking approval for a 100% transfer of ownership of hospice services to Lewis County General Hospital. This is a related party transfer. Lewis County Hospice indicates that the operation will be better suited under the hospital, and will result in improved services and reduced operation costs for Lewis County residents. There will be no interruption of patient services, since all business operations, including staff, will transfer to the new entity.

DOH Recommendation

Approval.

Need Summary

As this project involves only a change in the ownership of a hospice, no Need recommendation is required.

Program Summary

The Division of Home and Community Based Services reviewed the compliance history of the affiliated hospice for the time period 2002 to 2012. 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 any code violations.

A review of all personal qualifying information indicates there is nothing in the background of the members of the Board of Managers of Lewis County General Hospital to adversely effect their positions on the board. The applicant has the appropriate character and competence under Article 40 of the Public Health Law.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:	*Revenues:*	*$ 226,385*
	Expenses:	*652,278*
	Gain/(Loss):	*$ (425,893)*

The incremental losses will be funded by Lewis County General Hospital. Subject to Legislative approval, the Hospital is eligible to receive funding from the County, as necessary, to sustain operations and fund capital development.

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
The Central New York Health Systems Agency recommends approval of this application.

Office of Health Systems Management
Approval.

Council Action Date
June 7, 2012.

Programmatic Analysis

Background

This proposal seeks to transfer control of the Lewis County Public Health Agency Article 40 Hospice from the Lewis County Department of Health to the Lewis County General Hospital. This proposal also seeks PHHPC approval to file with the NYS Department of State a Certificate of Assumed Name to change the name of the Hospice from Lewis County Hospice to Lewis County General Hospital, d/b/a Lewis County General Hospital Hospice.

Review Summary

Lewis County Hospice, is the county owned and operated Article 40 hospice serving Lewis County, that has been controlled by the Lewis County Department of Public Health. The current proposal seeks to transfer control of the Article 40 Hospice from the Lewis County Department of Health to the Lewis County General Hospital. This proposal also seeks approval to file with the NYS Department of State a Certificate of Assumed Name to change the name of the Hospice from Lewis County Hospice to Lewis County General Hospital, d/b/a Lewis County General Hospital Hospice.

Following consultation with, and review by, the NYSDOH Division of Legal Affairs (DLA), it was determined that a Certificate of Need (CON) application and PHHPC approval would be required as the Hospice is currently governed by the county's Department of Public Health, which reports directly to the County legislature. However, the Lewis County General Hospital is governed by the hospital's Board of Managers, who are appointed by, and report directly to, the County legislature. Accordingly, the proposed transfer would place the Hospice under the direct control of a new additional governing body, the hospital's Board of Managers. The Division of Legal Affairs has advised that such a new direct governing body for the Hospice would require PHHPC approval.

The ultimate legal owner / operator of the proposed hospital-operated Hospice would remain the County of Lewis. The County currently operates Lewis County General Hospital and Lewis County General Hospital Nursing Home Unit, an Article 28 hospital and nursing home, Lewis County Public Health Agency CHHA, an Article 36 CHHA, and Lewis County Hospice, an Article 40 Hospice. CON application 121018-E has also been submitted to likewise transfer control of the Lewis County Article 36 CHHA from the Lewis County Department of Health to the Lewis County General Hospital. That proposal also seeks PHHPC approval to file with the NYS Department of State a Certificate of Assumed Name to change the name of the CHHA from Lewis County Public Health Agency to Lewis County General Hospital, d/b/a Lewis County General Hospital Certified Home Healthcare Agency.

The hospital's Board of Managers, the direct governing body of Lewis County General Hospital, who are appointed by the County legislature, consists of the following board members:

William H. Wormuth (President) Retired	**Randall G. Essenlohr** (Vice President) President, Essenlohr Motors, Inc. (Auto Dealership)
Michael F. Young, Esq. (Secretary) Self-Employed Owner, The Young Law Firm, PLLC	**Leonard R. Puzzuoli, CPA** (Ohio) CFO, Otis Products, Inc. (Defense Contractor Manufacturer)
Rae P. Rice Finance Director, Lewis County Opportunities, Inc. (NFP Community Action Agency)	**Thomas Spaulding** Director of Marketing and Program Development, Transitional Living Services (Mental Health Agency)
Michael A. Tabolt County Legislator, County of Lewis Owner/Operator, A & M Tabolt Dairy Farm (Agriculture and Logging)	**Charles W. Truax, Jr.** Retired Trustee, Village of Lowville
Gary L. Turck Self-Employed, Turck Property Holdings, LLC, N & A Property Holdings, LLC, Boulevard Subway	**Darin J. Zehr** Plant Manager, Kraft Foods, Inc. (Food Manufacturer)

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 Ohio State Accountancy Board indicates no issues with the CPA licensure associated with this application. In addition, the attorney has submitted a current Certificate of Good Standing.

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 has provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of the affiliated nursing home for the time period 2002 to 2012. An enforcement action was taken against Lewis County General Hospital Nursing Home Unit in 2007 based on a November, 2006 survey citing violations in Resident Behavior and Facility Practices: Staff Treatment of Residents, Quality of Care, and Quality of Care: Pressure Sores. The action was resolved with a $4000 civil penalty. It has been determined that the affiliated nursing home has provided a substantially consistent high level of care.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2012 dollars, for the first year subsequent to change in ownership, summarized below:

	Home Care-Routine
Revenues:	
Medicare	$200,535
Medicaid	5,342
Other	20,508
Total Revenues	$226,385
Expenses:	$652,278
Net Loss	$(425,893)
Utilization (days)	1761
Cost per day	$370.40

The incremental losses will be funded by Lewis County General Hospital.

Utilization by payor source for the first year subsequent to change in ownership is as follows:

Medicare	88%
Medicaid	2%
Other	10%

Expenses and utilization assumptions are based on Lewis County Hospice historical experience with the hospice program. Revenues are reflective of Lewis County Hospice current payment rates.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at $108,713 based on two months of first-year expenses and will be provided as equity by Lewis County General Hospital. Presented as BFA Attachment B, is the financial summary of Lewis County General Hospital, which indicates the availability of sufficient funds.

The submitted budget indicates a net loss of $425,893 for the first year subsequent to the change in operator. The losses will be funded by Lewis County General Hospital. The budget appears reasonable.

As shown on Attachment B, financial summary of Lewis County General Hospital, indicates that the facility has maintained positive working capital and net asset position and experience a net operating loss of $4,676,308 and $5,202,624 for 2009 and 2010, respectively, which represents 10% of gross operating revenues for both years. As shown on BFA Attachment C, a financial summary as of December 31, 2011 of Lewis County General Hospital indicates the facility maintained positive working capital and net asset position and experienced an operating loss of $5,325,996, which represents 6% of gross operating revenues.

The applicant has indicated the reason for the loss was attributed to higher pension and post retirement obligation costs and the requirement of GASB 45 to report the present value of post-retirement benefits. The County Board of Legislators has passed a Resolution to provide payments to the Lewis County General Hospital to fund and provide cash for operational support. The applicant has stated that in order to improve operations they will upgrade the facilities information system, offer hospice services for seven days instead of five to increase utilization, reduce salary costs by adopting the Hospital's labor agreement to eliminate overtime and use CNAs instead of LPNs to reduce costs without affecting patient care.

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

Recommendation
From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational chart before and after transfer, Lewis County General Hospital
BFA Attachment B	Financial Summary, Lewis County General Hospital
BFA Attachment C	Internal Financial Summary as of December 31, 2011, Lewis County General Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 4004 of the Public Health Law, on this 7th day of June, 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 establish an Article 40 hospice program to Lewis County Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

RESOLVED, that 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:
121049 E	Lewis County Hospice

APPROVAL CONTINGENT 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 # 112156-E

Parkview Operating Co., LLC
d/b/a Westchester Center for Rehabilitation and Nursing

County: **Westchester (Mount Vernon)**
Program: **Residential Health Care Facility**
Purpose: **Establishment**
Submitted: **September 15, 2011**

Executive Summary

Description

Parkview Operating Co., LLC, an existing limited liability company requests, approval to be established as the operator of MS Acquisition I, LLC d/b/a Westchester Center for Rehabilitation and Nursing, a 240-bed proprietary residential health care facility (RHCF) located at 10 Claremont Avenue, Mount Vernon. Ownership of the operation before and after the requested change is as follows:

Current		**Proposed**	
MS Acquisition I, LLC		*Parkview Operating Co., LLC*	
MEMBERS:		MEMBERS:	
Sam Strolovitch	(50%)	Henry Halpert	(23%)
Michael Melnick	(50%)	Jonathan Bleier	(42%)
		Bruce Peckman	(10%)
		Joshua Peckman	(18%)
		Moshe Bain	(4%)
		Tovah Bane	(3%)

Parkview Operating Co., LLC will enter into a lease agreement with Westchester Gardens Realty, LLC for the property. The applicant has submitted an executed addendum to the asset purchase agreement for the purchase of the property located at 10 Claremont Avenue, Mount Vernon, from 10 Claremont Avenue, LLC. Parkview Operating Co., LLC has assigned the right to purchase the property to Westchester Gardens Realty, LLC.

Jonathan Bleier has ownership interest in Highfield Gardens Care Center of Great Neck, a 200-bed RHCF in Great Neck.

DOH Recommendation

Contingent approval

Need Summary

Utilization has increased from 75.2% in 2008 to 81.2% in 2009. Although utilization for 2009 was below the planning optimum of 97%, it increased to 94% in 2010.

County RHCF Bed Need	*Westchester*
2016 Projected Need	6,716
Current Beds	6,711
Beds Under Construction	290
Total Resources	7001
Unmet Need	- 285

There will be no change in beds or services upon approval of this application.

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

Total asset purchase price of $1,228,790 will be met with member's equity.

Budget:		
	Revenues:	*$ 20,053,230*
	Expenses:	*19,587,532*
	Gain/(Loss):	*$ 465,698*

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

Architectural Summary

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the fully executed and dated Restated Articles of Organization of the applicant, which must be acceptable to the Department. [CSL]
2. 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]
3. Submission of a photocopy of the fully executed and dated original Operating Agreement of the applicant, which must be acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed and dated Restated Operating Agreement of the applicant, which must be acceptable to the Department. [CSL]
5. Submission of a photocopy of the fully executed applicant's Certificate of Doing Business under an Assumed Name, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed, signed and filed Deed indicating that the owner of the real property upon which the facility is located is Westchester Gardens Realty, LLC (WGR), which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the fully executed and dated Lease between WGR and the current owner/operator of the facility, which must be acceptable to the Department. [CSL]
8. Submission of applicable documentation terminating the current Lease between WGR and the current owner/operator of the facility, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the fully executed and dated Lease between WGR and the applicant, which must be acceptable to the Department. [BFA, CSL]
10. Submission of a photocopy of either (a) the fully executed and dated Certificate of Amendment to the Articles of Organization of the current owner/operator, removing all references, including but not limited to, Article 28 powers and purposes, to the ownership and operation of an Article 28 facility; or (b) the fully executed and dated Certificate of Dissolution of the current owner/operator, either of which must be acceptable to the Department. [CSL]
11. Submission of a photocopy of the fully executed and dated document required to be filed by the current owner/operator surrendering its right to utilize the assumed name "Westchester Center for Rehabilitation & Nursing Center," which must be acceptable to the Department. [CSL]
12. Submission of photocopy(ies) of any additional transfer agreements pursuant to which the assets of the current owner/operator will be transferred to the applicant, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of any agreement(s) between or among the applicant, its members and/or any third parties imposing transfer restrictions on the members ability to freely transfer their membership interests in compliance with Article 28 of the Public Health Law and its implementing regulations, which must be acceptable to the Department. [CSL]
14. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

15. Submission of a plan to enhance access to Medicaid residents. As a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:

    (a) Reach out to hospital discharge planners and make them aware of the facility's Medicaid Access Program;
    (b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    (c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    (d) Submit an annual report for two years to the Department which demonstrates progress with the implementation of the plan. The report should include, but not be limited to

- Information on activities relating to (a) - (c) above;
- Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
- Other factors as determined by the applicant to be pertinent.

The Department reserves the right to require continued reporting beyond the two-year period. [RNR]

Council Action Date
June 7, 2012.

Need Analysis

Background

Parkview Operating Co., LLC seeks approval to become the new established operator of Westchester Center for Rehabilitation & Nursing, a 240 bed proprietary Residential Health Care Facility located at 10 Claremont Avenue, Mount Vernon, Bronx County.

Analysis

Westchester Center for Rehabilitation and Nursing an existing Article 28 RHCF has utilization below that of Westchester County for all years under consideration, as shown in the table below:

RHCF Occupancy	*2007*	*2008*	*2009*
Westchester Center for Rehab	Did not report	75.2%	81.2%
Westchester County	94%	88.8%	88.4%

Parkview Operating Co., LLC plans to implement practices that will further improve the utilization at the facility to eventually reach the 97% planning optimum, including the recruitment of an outreach coordinator and a new medical director and development of new strategic relationships with hospitals. Additionally, the facility has upgraded therapy services by using in-house staff to facilitate increased continuity of care and made improvements to the physical plant.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Westchester Center for Rehabilitation and Nursing	Same
Address	10 Claremont Avenue Mount Vernon, NY 10550	Same
RHCF Capacity	240	Same
ADHC Program Capacity	N/A	Same
Type Of Operator	Limited Liability Company	Limited Liability Company
Class Of Operator	Proprietary	Proprietary
Operator	MS Acquisition I, LLC d/b/a Membership Michael Melnick 50.0% Samuel Strulovich 25.1% Joshua Peckman 8.3% Jonathan Bleier 8.3% Robert Bleier 8.3%	Parkview Operating Co., LLC d/b/a Membership Jonathan Bleier 42% Bruce Peckman 10% -- managing members Henry Halpert 23% Joshua Peckman 18% Moshe Bain 4% Tovah Bain 3%

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities
Highfield Gardens Care Center of Great Neck 6/04 to present
Westchester Center for Nursing and Rehabilitation 9/11 to present

Ambulance Company
Citywide Mobile Response 11/01 to present

- INDIVIDUAL BACKGROUND REVIEW:

Jonathan Bleier has been employed since June, 2007 as the Chief Operating Officer of Highfield Gardens Care Center. Mr. Bleier holds ownership interests in Highfield Gardens Care Center, since January, 2008, Westchester Center for Nursing and Rehabilitation, since September, 2011, and Citywide Mobile Response, since November, 2001.

Bruce Peckman has been employed since August, 2006 as the Chief Operating Officer of Highfield Gardens Care Center. Mr. Peckman holds no ownership interests in health care facilities.

Henry Halpert has been employed since August 1997 as the Chief Executive Officer of Citywide Mobile Response Corp., an ambulance service located in The Bronx in which he also holds an ownership interest. Mr. Halpert holds an

EMT license in good standing. Mr. Halpert has held an additional ownership interest in Highfield Gardens Care Center since June, 2004, in which he serves as President.

Joshua Peckman is employed as Director of Operations at Concept Capital Markets, LLC, a broker and investment company, since July 1, 2004. Mr. Peckman has held an ownership interest in Westchester Center for Nursing and Rehabilitation, since September, 2011.

Moshe Bain has been employed since June, 2004 as the administrator of record at Highfield Gardens Care Center of Great Neck. Mr. Bain is a licensed New York State nursing home administrator with license in good standing, and held a nursing home administrator license in New Jersey which expired in 2003. Mr. Bain holds no ownership interests in health care facilities.

Tovah Bain is retired, having worked most recently as a teacher. Ms. Bain holds no ownership interests in health care facilities.

Character and Competence – Analysis:
No adverse information has been received concerning the character and competence of any of the applicants.

A review of Highfield Gardens Care Center of Great Neck for the period reveals the following:

- The facility was fined $1,000 pursuant to a Stipulation and Order issued August 16, 2005 for surveillance findings of August 27, 2004. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined $6,000 pursuant to a Stipulation and Order issued June 18, 2008 for surveillance findings of August 8, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care; 415.12(c)(1) Quality of Care: Pressure Sores and 415.12(h)(1) & (2) Quality of Care: Accidents.

The review of operations for Highfield Gardens Care Center of Great Neck results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

The review of operations for Westchester Center for Nursing and Rehabilitation results in a conclusion of substantially consistent high level of care, since there were no enforcements.

The review of Citywide Mobile Response reveals that a substantially consistent high level of care has been provided, since there were no enforcements.

Recommendation
From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement
The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

Date:	April 1, 2010
Seller:	MS Acquisition I, LLC
Buyer:	Parkview Operating Co., LLC
Assets Transferred:	All of its right, title and interest in basic assets free and clear of all liens, claims, assessments, security interests, mortgages, collateral assignments, leases, attachments, levies and other defects in title and encumbrances of any kind or type.
Excluded Assets:	All retroactive rate increases, resulting from rate appeals, audits or otherwise, with respect to third party payments for services rendered prior to the Closing Date.

Assumed Liabilities:	All liabilities of Operator relating to the ownership and operation of the facility on and after the contract date.
Purchase Price:	$1,228,790
Payment:	Paid in full at closing

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law, with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liabilities and responsibilities.

Lease Rental Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Landlord:	Westchester Gardens Realty, LLC
Lessee	Parkview Operating Co, LLC
Premises:	All buildings, structures, fixtures and equipment located at 10 Claremont Avenue, Mount Vernon
Rental:	$2,127,400/year
Term:	35 years
Provisions:	The lessee shall be responsible for taxes, utilities, insurance

The lease agreement is between related entities with common ownership and is therefore a non-arm's length agreement. The applicant has submitted an executed addendum to the asset purchase agreement for the purchase of the property located at 10 Claremont Avenue, Mount Vernon from 10 Claremont Avenue, LLC. Parkview Operating Co., LLC has assigned the right to purchase the property to Westchester Gardens Realty, LLC.

Operating Budget

The applicant has submitted an operating budget in 2012 dollars, for the first year subsequent to change in ownership:

Revenues:	$20,053,230
Expenses:	
Operating	$17,004,300
Capital	2,583,232
Total Expenses:	$19,587,532
Net Income:	$465,698
Utilization: (patient days)	74,460
Occupancy:	85.0%

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

- Expenses include lease rental.
- Medicare and private pay assume current rates of payment.
- Medicaid rate is based on the facilities 2011 Medicaid rate published by DOH. Utilization by payor source for year on is expected as follows:

Medicare Fee for Service	9.5%
Medicaid Fee for Service	74.6%
Private Pay	15.9%

- The shift in 2010, 2011 and budgeted Medicaid and Private Pay is due to recent renovations enabling the facility to attract more private pay residents.

- Breakeven occupancy is projected at 82.2%.

Capability and Feasibility

The purchase price of $1,228,790 will be provided by member's equity. Presented as BFA Attachment A is the net worth statements of the proposed members showing sufficient funds. The applicant has submitted an affidavit from each member which states that they are willing to contribute resources disproportionate to ownership percentages.

Working capital contributions are estimated at $3,264,589, based on two months of first year expenses, and will be provided as equity from the proposed members. Presented as BFA Attachment B, is the pro-forma balance sheet of Parkview Operating Co., LLC as of the first day of operation, which indicates positive member's equity position of $4,555,790.

The submitted budget indicates a net income of $465,698 for the first year subsequent to change in ownership. The budget appears reasonable.

Review of Attachment C, financial summary of Westchester Center for Rehabilitation and Nursing, indicates that the facility has experienced average negative working capital, member's equity and an average net loss of $358,005 for the period shown. The applicant indicated the reason for the losses were the result of inefficient cost controls. The facility has implemented more stringent controls in order to decrease costs, which include the following: cutting agency staff and moving more positions in-house, switching its kitchen from electric to gas and non-kosher only, using a computerized physician order entry system for pharmaceuticals, and paying its bills on time, leading to better pricing from vendors. These controls have added approximately $1,630,000 to the facility's net profits.

Review of Attachment D, financial summary of Highfield Gardens Care Center of Great Neck, indicates that the facility has experienced average negative working capital, maintained positive equity and generated an average net income of $1,010,908 for the period shown. The applicant indicates that the negative working capital is due to an error on the facility's financial statements. This error will be corrected in subsequent financial statements.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary, Westchester Center for Rehabilitation & Nursing
BFA Attachment D	Financial Summary, Highfield Gardens Care Center of Great Neck
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 7th day of June, 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 Parkview Operating Co., LLC as the new operator of Westchester Center for Rehabilitation and Nursing, 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:
112156 E	Parkview Operating Co., LLC d/b/a Westchester Center for Rehabilitation and Nursing

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the fully executed and dated Restated Articles of Organization of the applicant, which must be acceptable to the Department. [CSL]
2. 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]
3. Submission of a photocopy of the fully executed and dated original Operating Agreement of the applicant, which must be acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed and dated Restated Operating Agreement of the applicant, which must be acceptable to the Department. [CSL]
5. Submission of a photocopy of the fully executed applicant's Certificate of Doing Business under an Assumed Name, which must be acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed, signed and filed Deed indicating that the owner of the real property upon which the facility is located is Westchester Gardens Realty, LLC (WGR), which must be acceptable to the Department. [CSL]
7. Submission of a photocopy of the fully executed and dated Lease between WGR and the current owner/operator of the facility, which must be acceptable to the Department. [CSL]
8. Submission of applicable documentation terminating the current Lease between WGR and the current owner/operator of the facility, which must be acceptable to the Department. [CSL]
9. Submission of a photocopy of the fully executed and dated Lease between WGR and the applicant, which must be acceptable to the Department. [BFA, CSL]
10. Submission of a photocopy of either (a) the fully executed and dated Certificate of Amendment to the Articles of Organization of the current owner/operator, removing all references, including but not limited to, Article 28 powers and purposes, to the ownership and operation of an Article 28 facility; or (b) the fully executed and dated Certificate of Dissolution of the current owner/operator, either of which must be acceptable to the Department. [CSL]
11. Submission of a photocopy of the fully executed and dated document required to be filed by the current owner/operator surrendering its right to utilize the assumed name "Westchester Center for Rehabilitation & Nursing Center," which must be acceptable to the Department. [CSL]
12. Submission of photocopy(ies) of any additional transfer agreements pursuant to which the assets of the current owner/operator will be transferred to the applicant, which must be acceptable to the Department. [CSL]
13. Submission of a photocopy of any agreement(s) between or among the applicant, its members and/or any third parties imposing transfer restrictions on the members ability to freely transfer their membership interests in compliance with Article 28 of the Public Health Law and its implementing regulations, which must be acceptable to the Department. [CSL]
14. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

15. Submission of a plan to enhance access to Medicaid residents. As a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:

    (a) Reach out to hospital discharge planners and make them aware of the facility's Medicaid Access Program;
    (b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    (c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    (d) Submit an annual report for two years to the Department which demonstrates progress with the implementation of the plan. The report should include, but not be limited to

- Information on activities relating to (a) - (c) above;
- Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
- Other factors as determined by the applicant to be pertinent.

The Department reserves the right to require continued reporting beyond the two-year period. [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 # 121018-E

Lewis County General Hospital
d/b/a Lewis County General Hospital Certified Home Healthcare Agency

County: **Lewis (Lowville)**
Purpose: **Establishment**

Program: **Certified Home Health Agency**
Submitted: **January 12, 2012**

Executive Summary

Description
Lewis County Public Health, an existing Article 36, public, not-for-profit corporation, seeks approval to transfer ownership of its certified home health agency (CHHA) to Lewis County General Hospital (LCGH). This is a related party transfer. Lewis County Public Health Agency indicates that the operation will be better suited under the Hospital and will result in improved services and reduced operational costs for Lewis County residents. There will be no interruption of patient services, since all business operations, including staff, will transfer to the new entity.

DOH Recommendation
Approval.

Need Summary
As this project involves only a change in the ownership of a CHHA, no Need recommendation is required.

Program Summary
The Division of Home and Community Based Services reviewed the compliance history of the affiliated CHHA for the time period 2002 to 2012. It has been determined that the CHHA has exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of any code violations.

A review of all personal qualifying information indicates there is nothing in the background of the members of the Board of Managers of Lewis County General Hospital to adversely effect their positions on the board. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

This proposal also seeks Public Health and Health Planning Council approval to file with the NYS Department of State a Certificate of Assumed Name to change the name of the CHHA from Lewis County Public Health Agency to Lewis County General Hospital, d/b/a Lewis County General Hospital Certified Home Healthcare Agency.

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

Incremental Budget:	*Revenues:*	*$ 691,345*
	Expenses:	*1,244,230*
	Gain/(Loss):	*$ (552,885)*

The incremental losses will be funded by Lewis County General Hospital. Subject to Legislative approval, the Hospital is eligible to receive funding from the County, as necessary, to sustain operations and fund capital development.

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
The Central New York Health Systems Agency recommends approval of this application.

Office of Health Systems Management
Approval.

Council Action Date
June 7, 2012.

Programmatic Analysis

Background

Lewis County Public Health Agency CHHA is the county owned and operated Article 36 certified home health agency (CHHA) serving Lewis County, that has been controlled by the Lewis County Department of Public Health. The current proposal seeks to transfer control of the Article 36 CHHA from the Lewis County Department of Health to the Lewis County General Hospital. This proposal also seeks approval to file with the NYS Department of State a Certificate of Assumed Name to change the name of the CHHA from Lewis County Public Health Agency to Lewis County General Hospital, d/b/a Lewis County General Hospital Certified Home Healthcare Agency.

Following consultation with, and review by, the NYSDOH Division of Legal Affairs (DLA), it was determined that a Certificate of Need (CON) application and PHHPC approval would be required, as the CHHA is currently governed by the county's Department of Public Health, which reports directly to the County legislature. However, the Lewis County General Hospital is governed by the hospital's Board of Managers, who are appointed by, and report directly to, the County legislature. Accordingly, the proposed transfer would place the CHHA under the direct control of a new additional governing body, the hospital's Board of Managers. The Division of Legal Affairs has advised that such a new direct governing body for the CHHA would require PHHPC approval.

The ultimate legal owner / operator of the proposed hospital-operated CHHA would remain the County of Lewis. The County currently operates Lewis County General Hospital and Lewis County General Hospital Nursing Home Unit, an Article 28 hospital and nursing home, Lewis County Public Health Agency CHHA, an Article 36 CHHA, and Lewis County Hospice, an Article 40 Hospice. CON application 121049-E has also been submitted to likewise transfer control of the Lewis County Article 40 hospice from the Lewis County Department of Health to the Lewis County General Hospital. That proposal also seeks PHHPC approval to file with the NYS Department of State a Certificate of Assumed Name to change the name of the Hospice from Lewis County Hospice to Lewis County General Hospital, d/b/a Lewis County General Hospital Hospice.

The hospital's Board of Managers, the direct governing body of Lewis County General Hospital, who are appointed by the County legislature, consists of the following board members:

William H. Wormuth (President) Retired	**Randall G. Essenlohr** (Vice President) President, Essenlohr Motors, Inc. (Auto Dealership)
Michael F. Young, Esq. (Secretary) Self-Employed Owner, The Young Law Firm, PLLC	**Leonard R. Puzzuoli, CPA** (Ohio) CFO, Otis Products, Inc. (Defense Contractor Manufacturer)
Rae P. Rice Finance Director, Lewis County Opportunities, Inc. (NFP Community Action Agency)	**Thomas J. Spaulding** Director of Marketing and Program Development, Transitional Living Services (Mental Health Agency)
Michael A. Tabolt County Legislator, County of Lewis Owner/Operator, A & M Tabolt Dairy Farm (Agriculture and Logging)	**Charles W. Truax, Jr.** Retired Trustee, Village of Lowville
Gary L. Turck Self-Employed, Turck Property Holdings, LLC, N & A Property Holdings, LLC, Boulevard Subway	**Darin J. Zehr** Plant Manager, Kraft Foods, Inc. (Food Manufacturer)

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 Ohio State Accountancy Board indicates no issues with the CPA licensure associated with this application. In addition, the attorney has submitted a current Certificate of Good Standing.

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 has provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of the affiliated nursing home for the time period 2002 to 2012. An enforcement action was taken against Lewis County General Hospital Nursing Home Unit in 2007 based on a November, 2006 survey citing violations in Resident Behavior and Facility Practices: Staff Treatment of Residents, Quality of Care, and Quality of Care: Pressure Sores. The action was resolved with a $4000 civil penalty. It has been determined that the affiliated nursing home has 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 agency and hospice for the time period 2002 to 2012. It has been determined that the certified home health agency and hospice have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of any code violations.

A review of all personal qualifying information indicates there is nothing in the background of the members of the Board of Managers of Lewis County General Hospital to adversely effect their positions on the board. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an incremental operating budget, in 2012 dollars, for the first year subsequent to the change in operator, summarized below:

Expenses are broken down as follows:

	Total Cost	Visit/Hours	Cost per Visit/Hour
Nursing	$1,022,056	3425	$298.41
Physical Therapy	169,610	975	$173.96
Medical Social Services	1,076	5	$215.19
Home Health Aides*	51,488	625	$82.38
Total	$1,244,230		

**Reported in hours*

Revenues:	
Medicaid	$226,452
Medicare	355,345
Commercial	105,700
Private Pay	3,848
Total Revenues:	$691,345
Expenses:	$1,244,230
Net Loss	$(552,885)

The incremental losses will be funded by Lewis County General Hospital.

Utilization by payor source for the first year subsequent to the change in operator is as follows:

Commercial Fee for Service	18%
Medicare Managed Care	49%
Medicaid Fee for Service	28%
Private Pay	1%
Charity Care	4%

Expenses and utilization assumptions are based on the historical experience of Lewis County Public Health's CHHA. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment system in which the lower of incremental cost to episodic payment was projected for year one for a conservative approach.

Capability And Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at $207,372 based on two months of first-year expenses and will be provided as equity by Lewis County General Hospital. Presented as BFA Attachment B, is the financial summary of Lewis County General Hospital, which indicates the availability of sufficient funds.

The submitted budget indicates a net loss of $552,885 during the first year subsequent to the change in operator. The DOH staff has sensitized the budgets further to include the Medicaid Episodic Payment System for Certified Home Health Agencies which projects revenues for year one to increase approximately $110,898 reducing the loss to $441,987. The losses will be funded by Lewis County General Hospital. The budget appears reasonable.

Effective May 1, 2012, a new Episodic Payment System (EPS) reimbursement methodology to reimburse CHHA providers for services provided to Medicaid patients receiving home care services took effect. The EPS is based on a price for 60-day episodes of care which will be adjusted by patient acuity and regional wage differences. The EPS was recommended by the Medicaid Redesign Team (MRT proposal #5) and authorized in the 2011-12 enacted budget. The EPS is designed to address the issue of rapid growth in Medicaid costs per patient by better aligning payments with needed services and is part of a broad effort to promote the development of care management arrangements for Medicaid recipients. The budget appears reasonable.

As shown on BFA Attachment B, a financial summary of Lewis County General Hospital, indicates that the facility has maintained positive working capital and net asset position and experienced a net operating loss of $4,676,308 and $5,202,624 for 2009 and 2010, respectively, which represents 10% of gross operating revenue for both years. As shown on BFA Attachment C, a financial summary as of December 31, 2011 of Lewis County General Hospital indicates the facility maintained positive working capital and net asset position and experienced an operating loss of $5,325,996, which represents 6% of gross operating revenues.

The applicant has indicated the reason for the loss was attributed to higher pension and post retirement obligation costs and the requirement of GASB 45 to report the present value of post-retirement benefits. The County Board of Legislators has passed a Resolution to provide payments to the Lewis County General Hospital to fund and provide cash for operational support. The applicant has stated that in order to improve operations they will upgrade the facilities information system, offer CHHA services for seven days instead of five to increase utilization, reduce salary costs by adopting the Hospital's labor agreement to eliminate overtime and use CNAs instead of LPNs to reduce costs without affecting patient care.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational chart before and after transfer, Lewis County General Hospital
BFA Attachment B	Financial Summary, Lewis County General Hospital
BFA Attachment C	Internal Financial Summary as of December 31, 2011, Lewis County General Hospital

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of June, 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 ownership of Lewis County Public Health Agency's Certified Home Health Agency program to Lewis County Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

RESOLVED, that 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
121018 E	Lewis County General Hospital d/b/a Lewis County General Hospital Certified Home Healthcare Agency

APPROVAL CONTINGENT UPON:

N/A

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 # 121219-E

L. Woerner, Inc. d/b/a HCR

County: **Clinton (Plattsburgh)**
Purpose: **Establishment**

Program: **Certified Home Health Agency**
Submitted: **April 16, 2012**

Executive Summary

Description

L. Woerner, Inc., d/b/a HCR, an existing Article 36 proprietary corporation, requests approval to purchase and become the operator of Clinton County's certified home health agency (CHHA) and long-term home health care program (LTHHCP) located at 176 US Oval, Plattsburgh. HCR operates CHHAs in the counties of Genesee and Monroe, along with a LTHHCP in Genesee County. In addition, HCR has acquired the following programs:

- *Orleans County CHHA* – Public Health and Health Planning Council (PHHPC) contingent approval on June 11, 2011 (CON #101156-E)
- *Schoharie County CHHA* – PHHPC approved February 2, 2012 (CON #111096-E)
- *Cortland County CHHA* – Public Health Council (PHC) approved November 14, 2011 (CON #111529-E)
- *Madison County CHHA and LTHHCP* – PHC approved March 12, 2012 (CON #112025-E)
- *Delaware County CHHA and LTHHCP* – PHC approved April 19, 2012 (CON #121027-E)

The Department approved a management agreement between HCR and Clinton County on March 30, 2012, where HCR will provide a Director of Patient Services to oversee the clinical programs at Clinton County's CHHA and LTHHCP.

The stock of L. Woerner, Inc., d/b/a HCR is held by the following:

HCR Employee Stock Ownership Plan (ESOP)	– 90%
Louise Woerner	– 7%
Mark Maxim	– 3%

Louise Woerner and Mark Maxim are directors of HCR and trustees for the ESOP.

HCR's ESOP was established as an employee benefit. The employees participating in the ESOP are allocated shares of stock which is held in trust and they may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their account. Employees participating in the ESOP instruct the trustees on how to vote their allocated shares only in the event of a corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all the assets of the corporation or similar transaction.

DOH Recommendation

Approval.

Need Summary

As this project involves only a change in the ownership of a CHHA, no Need recommendation is required.

Program Summary

A review of the personal qualifying information indicates there is nothing in the background of the principal stockholders, trustees, board members, and officers to adversely effect their positions with L. Woerner, Inc., d/b/a HCR. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary

The $1,500,000 asset purchase price will be provided from the personal resources of stockholders Louise Woerner and Mark Maxim, along with the applicant's liquid resources. There are no project costs associated with this proposal.

Incremental Budget:		
	Revenues:	*$ 4,217,902*
	Expenses:	*4,179,233*
	Gain/(Loss):	*$ 38,669*

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 conditional upon:

1. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
2. Approval conditioned upon no employee, or any other individual, owning/controlling 10% or more of the stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]
3. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Assumed Name of L. Woerner, Inc., acceptable to the Department. [CSL]

Council Action Date

June 7, 2012.

Programmatic Analysis

Background

L. Woerner, Inc., d/b/a HCR (Home Care of Rochester), an existing Article 36 CHHA and LHCSA serving Monroe, Genesee, Orleans, and Cortland Counties, wishes to purchase and become the new owner/operator of the Certified Home Health Care Program and Long Term Home Health Care Program currently operated by Clinton County Department of Health Division of Nursing serving Clinton County. HCR plans to open a new separate and distinct agency in Clinton County to serve Clinton County and close the CHHA and LTHHCP operated by Clinton County Department of Health Division of Nursing. L Woerner, Inc., d/b/a HCR will continue serving Genesee, Orleans and Monroe Counties from its office located in Monroe County and Cortland County from an office located in Cortland County. HCR and its principals all possess the appropriate character and competence for approval of this application.

Review Summary

L. Woerner, Inc., a business corporation operating under the assumed name of HCR (Home Care of Rochester), was established as the operator of an Article 36 certified home health agency (CHHA) serving Monroe, Genesee, Orleans and Cortland Counties, a Long Term Home Health Care Program (LTHHCP) serving Genesee County and an Article 36 licensed home care service agency (LHCSA) under the same assumed name. In addition, L. Woerner, Inc has received conditional approval of the Public Health and Health Planning Council to acquire the CHHA and LTHHCP currently operated by Madison County under CON # 112025, the CHHA currently operated by Schoharie County under CON # 111096 and the CHHA and LTHHCP currently operated by Delaware County under CON # 121027.

HCR is applying for approval to purchase and become the new owner/operator of the CHHA and LTHHCP currently operated by Clinton County Department of Health Division of Nursing. HCR plans open a new separate and distinct agency in Clinton County, and Clinton County Department of Health Division of Nursing and LTHHCP will close.

HCR will provide the services of Audiology, Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutrition, Occupational Therapy, Personal Care, Physical Therapy, Respiratory Therapy and Speech Language Pathology to the residents of Clinton County.

HCR plans to offer all thirteen of the required LTHHCP services as follows: Audiology, Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Medical Supply, Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Personal Care, Physical Therapy, Respiratory Therapy, and Speech Language Pathology.

In 2006, L. Woerner, Inc, d/b/a HCR, CON project 061088, received Public Health Council approval to convert 90% of the shares of corporate stock (which up to that time where owned 90.5% by Louise Woerner and 9.5% by Mark Maxim - both disclosed below), to an Employee Stock Ownership Plan (ESOP), and establish a trust to control and manage the assets, including the stock, held by the ESOP. Ms. Woerner retained 7% of the shares, and Mr. Maxim retained 3% of the shares.

Each employee participating in the ESOP does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Ms. Woerner and Mr. Maxim are named the sole voting trustees of the ESOP trust, with the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the trustees in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction. Additional trustees may be designated in the future, but they will not have any voting rights. The Certificate of Amendment to the Certificate of Incorporation stated that the corporation's stock shall be held only by employees of L. Woerner, Inc., d/b/a HCR, or any of its wholly owned subsidiaries, or by the ESOP trust. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no employee controls 10% or more of the stock, or will control 10% or more of the stock without first obtaining Department of Health and/or Public Health Council approval, as appropriate.

CON #061088-E also noted that L. Woerner, Inc., d/b/a HCR, operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc., d/b/a HCR wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

The corporation is currently authorized 2,000,000 shares of stock. The stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,800,000 shares (90%)
Louise Woerner – 140,000 shares (7%)
Mark Maxim – 60,000 shares (3%)

The Trustees of the Employee Stock Ownership Plan Trust are as follows:

Louise Woerner Chief Executive Officer, L. Woerner, Inc., d/b/a HCR (CHHA and LHCSA) Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Program) – 4/1/02 to 4/10/08	**Mark Maxim, CPA** Chief Operating Officer / Administrator, L. Woerner, Inc., d/b/a HCR (CHHA and LHCSA) Affiliations: Lakeside Memorial Hospital, Inc., Brockport - 5/3/06 to present

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR, are as follows:

Louise Woerner Previously Disclosed **Don H. Kollmorgen** Retired	**Mark Maxim, CPA** Previously Disclosed **Carolyn A. Maxim, LMSW** Owner, Carolyn A. Maxim, LMSW (Counseling Services)

The Office of the Professions of the State Education Department indicates no issues with the CPA licensures of Mr. Maxim or with the LMSW license of Ms. Maxim. In addition, a search of all of the above named trustees, board members, officers, employers, and health care affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Division of Home and Community Based Services reviewed the compliance history of both the CHHA and the LHCSA operated by L. Woerner, Inc., d/b/a HCR, for the time period 1999 to present and the LTHHCP from the period of May 2010 to present. It has been determined that the CHHA, LTHHCP and LHCSA have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. The CHHA, LTHHCP and LHCSA have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Office of Managed Care reviewed the compliance history of HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that the affiliated managed care program was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The Division of Primary and Acute Care Services reviewed the compliance history of Lakeside Memorial Hospital, Inc., for the time period May 3, 2006 to present. It has been determined that the affiliated hospital has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date:	January 26, 2012
Sellers:	County of Clinton, a political subdivision of New York State – also known as Clinton County Department of Health Division of Nursing LTHHCP and Clinton County Department of Health Division of Nursing CHHA
Buyers:	L. Woerner, Inc., d/b/a HCR
Assets Purchased:	All right, title, interest to the following: CHHA and LTHHCP Operating Rights; copies of current patient lists and patient files, with pending orders, treatment plans, clinical records; and all sellers' rights under assumed operating contracts.
Assumed Liabilities:	No liabilities assumed
Excluded Liabilities:	Buyer shall not assume or be responsible for any obligations of the Seller, whether known or unknown further describe as: accounts payable, any amounts owed to Medicare, Medicaid, or third party payor; any liability arising from provider agreements or operating contracts; any liability for employee compensation; any liability arising from excluded assets; all contracts, understandings, and collective bargaining; and any all claims.
Purchase Price:	$1,500,000
Payment Terms:	$ 210,000 deposit at the signing of purchase agreement $ 20,000 at the signing staffing agreement $ 322,500 (paid over the 1st 12 months at $26,875 per month-commencing on the closing date $ 322,500 (paid over the 2nd 12 months at $26,875 per month –commencing on the 1st anniversary of the closing $ 322,500 (paid over the 3rd 12 months at $26,875 per month – commencing on the 2nd anniversary of the closing $ 302,500 (paid over the 4th 12 months at $25,208.33 per month – commencing on the 3rd anniversary of the closing.)

The applicant have provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 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.

Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site, the terms are summarized below:

Dated:	April 3, 2012
Premises:	1,540 gross square feet located at 176 US Oval, Plattsburgh
Landlord:	Neil Fesette

Lessee:	L. Woerner, Inc., d/b/a HCR
Term:	3 years at $18,000 ($11.69 per sq. ft.) Renewal one 3-year term at $18,600 per year
Provisions:	Utilities and Maintenance

The applicant states the lease is a non-arm's length arrangement.

Operating Budget

The applicant has submitted incremental operating budgets, in 2012 dollars, as summarized below:

For the 1st Year	CHHA	LTHHCP	Combined
Revenues	$3,066,106	$1,151,796	$4,217,902
Expenses	3,029,319	1,149,914	4,179,233
Net Income	$36,787	$1,882	$38,669

Expenses and utilization by program are detailed as follows:

CHHA – Year One

Service	Total Cost	Visits/Hours	Cost/Visit/Hour
Nursing	$2,085,208	15,413	$135.29
Physical Therapy	526,858	5,452	96.64
Speech Pathology	11,920	116	102.76
Occupational Therapy	69,988	679	103.08
Home Health Aide *	326,282	14,470	22.55
Medical Social Services	9,063	108	83.92
Total	$3,029,319		

**Presented in hours*

LHHCP – Year One

Service	Total Cost	Visits/Hours	Cost/Visit/Hour
Nursing	$251,667	2,812	$89.50
Physical Therapy	69,672	748	93.14
Speech Pathology	4,582	47	97.49
Occupational Therapy	7,289	74	98.50
Home Health Aide *	259,935	8,781	29.60
Personal Care*	510,543	17,247	29.60
Medical Social Services	46,226	556	83.14
Total	$1,149,914		

**Presented in hours*

Utilization by payor source for the first year is as follows:

	CHHA	LTHHCP
Medicaid – Fee for Service	59.1%	96.4%
Medicare – Fee for Service	27.4%	.3%
Commercial – Fee for Service	9.4%	.3%
Private Pay & Other	2.0%	.8%
Charity Care	2.1%	2.2%

Utilization and expense assumptions were based on Clinton County cost reports with a 2.5% trending factor added to the costs.

The applicant's states the first year Medicaid episodic payment is expected to be approximately $1,464,000 or slightly less than the $1,466,728 originally budgeted. The applicant expects the average episodic payment to be approximately $4,575 per episode after adjusting for Clinton County's wage factor of .95561 and using a .85 case mix factor.

Capability and Feasibility

There are no project costs associated with this application. The $1,500,000 purchase price for Clinton County's CHHA and LTHHCP will be funded from stockholders Louise Woerner and Mark Maxim personal resources along with HCR liquid resources.

Presented as BFA Attachment C is the statement of personal net worth, which indicates Louise Woerner and Mark Maxim have sufficient liquid resources to meet the purchase price.

Working capital requirements are estimated at $696,539, which appears reasonable based upon two months of first year expenses. A review of BFA Attachment C demonstrates Louise Woerner and Mark Maxim have the ability to provide the financial support for this project.

The budgets project an operating surplus of $38,669 and $40,626 in the first and third years, respectively. Revenues were estimated based the payors' current reimbursement methodology. The budget appears reasonable.

Presented as BFA Attachment A is the 2009 and 2010 certified financial statements for L. Woerner, Inc., d/b/a HCR which shows a positive working capital position and a positive equity position. During 2010 L. Woerner, Inc., incurred a $2,694,106 loss. The applicant stated one of the reasons for the loss was a $4,000,000 non-cash ESOP contribution. Presented as BFA Attachment B is the 2011 internal financial statements for L. Woerner, Inc., which shows a net loss of $5,893,001. The applicant states during 2011 considerable time and resources were deployed to position HCR as preferred provider of comprehensive patient care. The prime elements contributing to the loss includes the following:

- Deployed up-to date technology including telemonitoring and point-of-care (POC) systems that will bring efficiency and help enhance patient care ($829,837);
- Developed an infrastructure including added staff to accommodate expansion into new and existing markets that in the long run will lower incremental costs ($1,446,000);
- Pursued several acquisitions to extend operations into new geographic areas ($435,026);
- Administrative consolidation and restructuring costs of Monroe County staff ($96,425);
- Revenue declines from prior year ($1,052,462);
- ESOP contribution ($1,000,000).

Presented as BFA Attachment D is L. Woerner, Inc., pro-forma balance sheet that shows operations will have $1,351,588 in cash.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for 2009 and 2010, L. Woerner, Inc., d/b/a HCR
BFA Attachment B	Internal Financial Summary as of December 31, 2011, L. Woerner, Inc., d/b/a HCR

BFA Attachment C	Personal Net Worth Statement
BFA Attachment D	Pro-forma Balance Sheet for L. Woerner, Inc., d/b/a HCR
BFA Attachment E	Organizational Chart (post-transaction)

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of June, 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 acquire the Clinton County Certified Home Health Agency and Long Term Health Care Program and add Clinton County to its existing operating certificate, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER	APPLICANT/FACILITY
121219 E	L. Woerner, Inc. d/b/a HCR

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONED UPON:

1. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
2. Approval conditioned upon no employee, or any other individual, owning/controlling 10% or more of the stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]
3. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Assumed Name of L. Woerner, Inc., acceptable to the Department. [CSL]

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:	Good Samaritan CareGivers, Inc. dba Good Samaritan Home Health Agency
Address:	Williamsville
County:	Erie
Structure:	For Profit Corporation
Application Number:	1986-L

Description of Project:

Good Samaritan CareGivers, Inc. dba Good Samaritan Home Health Agency, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Good Samaritan CareGivers, Inc. is an existing non-medical companion care agency.

Good Samaritan CareGivers, Inc. has authorized 200 shares of stock which are owned as follows: Timothy J. Karnes owns 50 shares and Michelle J. Karnes owns 50 shares. One hundred shares of stock remain unissued.

The members of the Board of Directors of Good Samaritan CareGivers, Inc. comprise the following individuals:

Timothy J. Karnes, Chairperson
Owner/Operator, Good Samaritan CareGivers, Inc.

Michelle J. Karnes, R.N., Secretary, Treasurer
Co-owner, Good Samaritan CareGivers, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 5500 Main Street, Suite 109, Williamsville, New York 14221:

Allegany	Cattaraugus	Chautauqua
Erie	Genesee	Monroe
Niagara	Orleans	Wyoming

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:	May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Life's Changing Seasons Eldercare, LLC
Address:	Fayetteville
County:	Onondaga
Structure:	Limited Liability Company
Application Number:	1856-L

Description of Project:

Life's Changing Seasons Eldercare, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Life's Changing Seasons Eldercare, LLC is an existing non-medical companion care agency.

Life's Changing Seasons Eldercare, LLC is composed of the following sole member:

Eileen T. O'Neill-Duncan, R.N., 100%
Owner, Life's Changing Seasons Eldercare, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 203 East Genesee Street, Fayetteville, New York 13066:

Onondaga	Cayuga	Madison
Oswego	Cortland	Tompkins
Seneca	Oneida	

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:	May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	NurseCore Management Services – New York, LLC d/b/a NurseCore of Rochester
Address:	Rochester
County:	Monroe
Structure:	Limited Liability Company
Application Number:	1798-L

Description of Project:

NurseCore Management Services – New York, LLC, d/b/a NurseCore of Rochester, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. NurseCore of Rochester is currently operational as a nurse staffing office.

NurseCore Management Services – New York, LLC, d/b/a NurseCore of Rochester is composed of the following two members:

Sharon Carr, 50%	Chandra Carr Geanta, 50%
Owner, NurseCore of Rochester	Owner, NurseCore of Rochester
Affiliations: NurseCore of Albany, NY,	Affiliations: NurseCore of Albany, NY,
NurseCore of Syracuse, NY	NurseCore of Syracuse, NY

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 1302 Scottsville Road, Rochester, New York 14624:

Livingston	Monroe	Ontario	Wayne

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

A ten year review of the following agencies was performed as part of this review:

NurseCore of Albany, NY
NurseCore of Syracuse, NY

The information provided by the Bureau of Quality Assurance and Licensure has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of 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:	May 10, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Sephardic Home Care Services, Inc.
Address:	Brooklyn
County:	Kings
Structure:	Not-for-Profit Corporation
Application Number:	1977-L

Description of Project:

Sephardic Home Care 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 parent of Sephardic Home Care Services, Inc. is Sephardic Nursing and Rehabilitation Center, a nursing home and not-for-profit corporation.

The Board of Directors of Sephardic Home Care Services, Inc. comprises the following individuals:

James H. Caspi, President
Owner, Keystone Realty Association

Jeffrey Menaged, Vice President
Owner/CEO, Chief Executive Air
(private aviation)
Affiliation: Sephardic Nursing and Rehab. Center
(2008 – present)

Michael R. Lopez, CPA, Treasurer
Partner, Eisner Amper, LLP (accounting firm)
Affiliation: Sephardic Nursing and Rehab.
Center (2001 – present)

The Board of Directors of Sephardic Nursing and Rehabilitation Center comprises the following individuals:

Robert Cohen, Chairman
VP Investments, Morgan Stanley
Smith Barney

Michael R. Lopez, President
(disclosed above)

Clifton Russo, Vice President
VP, Russ Export Corp.

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 2266 Cropsey Avenue, Brooklyn, New York 11214:

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	Speech Language Pathology
Audiology	Medical Social Services	Nutrition
Homemaker	Housekeeper	

A ten year review of the operations of Sephardic Nursing and Rehabilitation Center was performed as part of this review:

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the nursing home reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 14, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care
Address:	Ransomville
County:	Niagara
Structure:	Limited Liability Company
Application Number:	2033L

Description of Project:
Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care, a Limited Liability Company, requests approval to obtain licensure as a home care agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Assisted Living Program (ALP). This project was granted contingent approval to proceed under the Niagara 100 ALP RFA.

The members of Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care comprise the following individuals:

Neil W. Zyskind, Esq. – Member – 50%
Owner/Operator:
Mary Agnes Manor, LLC - ACF (2002 – present)
Mary Agnes Manor, LLC - ALP (9/7/11 – present)
Leroy Manor, LLC - ACF (2005 – present)
Heritage Ransomville Management LLC d/b/a Heritage Manor of Ransomville - ACF (2004 – present)
Narrowsburg Home, Inc. d/b/a Kelly's Home for Adults - ACF (1999 – 2009)
Mary Agnes Manor LLC d/b/a Mary Agnes Manor Home Care - LHCSA (2011 –present)

Phyllis Zyskind – Member – 50%
Senior Financial Consultant, JP Morgan Chase
Owner/Operator:
Mary Agnes Manor, LLC - ACF (2002 – present)
Mary Agnes Manor, LLC - ALP (9/7/11 – present)
Heritage Ransomville Management LLC d/b/a Heritage Manor of Ransomville - ACF (2004 – present)
Narrowsburg Home, Inc. d/b/a Kelly's Home for Adults - ACF (2005 – 2009)
Mary Agnes Manor LLC d/b/a Mary Agnes Manor Home Care - LHCSA (2011– present)

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 Neil W. Zyskind.

The applicant proposes to serve Niagara County from an office located at 3509 Ransomville Road, Ransomville, New York 14131.

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	Housekeeper

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

Mary Agnes Manor, LLC - ACF
Mary Agnes Manor, LLC - ALP (9/7/11 – present)
Leroy Manor, LLC - ACF (2005 – present)
Heritage Ransomville Management LLC d/b/a Heritage Manor of Ransomville - ACF (2004 – present)
Narrowsburg Home, Inc. d/b/a Kelly's Home for Adults - ACF (1999 – 2009)
Mary Agnes Manor LLC d/b/a Mary Agnes Manor Home Care - LHCSA (7/18/11 –present)

- **Narrowsburg Home, Inc. d/b/a Kelly's Home for Adults w**as referred for enforcement for a inspection reports dated May 12, 2004, January 28 2005 and March 30, 2005. The enforcement action resulted in a Stipulation and Order being signed on September 2, 2005 and a payment of a five thousand dollar ($5,000) civil penalty.
    - 18 NYCRR 487.4 (f)(1) Admission Standards
    - 18 NYCRR 487.7 (h)(5, 8-10) Resident Services – Activity Services
    - 18 NYCRR 487.9(a)(6) Personnel
    - 18 NYCRR 487.10(c) (1-3) Records & Reports – Resident Records
    - 18 NYCRR 487.11 (f) (19) Environmental – Smoke/Fire Protection
    - 18 NYCRR 487.11 (i) (4)(i) Environmental – Furnishings/Equipment
    - 18 NYCRR 487.11 (j) (1-3) Environmental – Housekeeping
    - 18 NYCRR 487.11 (k) (13) Environmental – Maintenance
    - 18 NYCRR 486.5(a)(4)(v) Systemic Endangerment in Maintenance

- **Narrowsburg Home, Inc. d/b/a Kelly's Home for Adults** was referred for enforcement for inspection reports dated November 30, 2005 and September 21, 2006. The enforcement action resulted in a Stipulation and Order being signed on April 14, 2009 and a payment of a two thousand five hundred dollar ($2,500) civil penalty. Deficiencies were found in the following areas:
    - 18 NYCRR 487.8(c) Food Service
    - 18 NYCRR 487.9 (e)(1) Personnel
    - 18 NYCRR 487.7 (f)(19) Environmental – Smoke/Fire Protection
    - 18 NYCRR 487.11 (i) (4)(i) Environmental – Furnishings/Equipment
    - 18 NYCRR 487.11 (i) (4)(iii-v) Environmental – Furnishings/Equipment
    - 18 NYCRR 487.11 (i) (1-3) Environmental – Housekeeping
    - 18 NYCRR 487.11 (k) (1-3) (5)) Environmental - Maintenance

- **Narrowsburg Home, Inc. d/b/a Kelly's Home for Adults** was referred for enforcement for inspections performed in 2008 and 2009. The enforcement action resulted in a Decision and Order being signed on June 30, 2010. The Decision and Order found that the agency was in violation of the following regulations between March 17, 2009 and September 3, 2009 and assessed a fine in the amount of eighteen thousand seven hundred dollar ($18,700) civil penalty.
    - 18 NYCRR 487.11(f)(19) Environmental – Fire Hazards
    - 18 NYCRR 487.11(i)(4)(i) Environmental: Furnishings and Equipment: Mattresses/Box Spring
    - 18 NYCRR 487.11(j)(1-3) Environmental: Housekeeping
    - 18 NYCRR 487.11(k)(1-3) Maintenance: Facility, Building, Grounds, Equipment and Furnishing
    - 18 NYCRR 487.11(k)(5) Maintenance: Floors and Floor Covering

- **Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville** was referred for enforcement for inspection reports dated January 19, 2006, May 26, 2006, November 20, 2006, and May 23, 2007. The enforcement action resulted in a Stipulation and Order being signed on July 8, 2010 and a payment of a ten thousand dollars ($10,000) civil penalty. Deficiencies were found in the following area:

- 18 NYCRR 487.7(f)(5) Medication Management: Supervision and Assistance

- **Leroy Manor, LLC d/b/a Leroy Manor** was referred for enforcement for an incident that occurred on April 1, 2008 which resulted in a Decision after Hearing being signed on August 4, 2009 and a payment of a one thousand dollar ($1,000) civil penalty. The Decision and Order found that facility violated the Department regulations contained in 18 NYCRR 487.7(d)(c)((iii)(a) & (b) by failing to notify a resident's physician and representative when the resident was ill.

The Bureau of Adult Care Facility Quality and Surveillance has indicated that the above referenced facilities have exercised sufficient supervisory responsibility to protect the health, safety and welfare of residents and to prevent recurrent code violations. When code violations have occurred, it was determined that the operators investigated the circumstances surrounding the violations and took steps appropriate to the gravity of the violations which a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The information provided by the Division of Home and Community Based Services has indicated that the Licensed Home Care Services Agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: May 4, 2012

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	CL Healthcare, Inc.
Address:	Bronx
County:	Bronx
Structure:	Not-for-Profit Corporation
Application Number:	2112-L

Description of Project:

CL Healthcare, 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 primary purpose of this LHCSA will be to serve the members of CenterLight Healthcare's PACE and MLTC programs.

The Board of Directors of CL Healthcare, Inc. comprises the following individuals:

Michael R. Potack, Chairperson
CEO, Unitex Holdings
Affiliation: Beth Abraham Health Services

Michael S. Fassler, NHA, Vice Chairperson
President, CenterLight Health System

Stephen B. Mann, CPA, Secretary/
Treasurer
Senior VP, Beth Abraham Health Services
Affiliations: Best Choice Home Health Care, (2000 – present), Beth Abraham Health Services, (2000 – present), CenterLight Healthcare MLTC, (2000 – present), CenterLight Healthcare
D & T Center (2000 – present)

The parent of CL Healthcare, Inc. is CenterLight Health System, another not-for-profit corporation.

The Board of Directors of CenterLight Health System comprises the following individuals:

Michael R. Potack, Chairman
(disclosed above)

Jerald I. Moskowitz, Vice Chairman
Retired

Edwin H. Stern, III, Secretary/Treasurer
Executive VP, Seiden Krieger Associates (executive search consultants)
Affiliations: Montefiore Medical Center (1968 – present),
Beth Abraham Health Services
(1969 – present)

Thomas R. Berkel
Retired

Vitina A. Biondo, Esq.
Unemployed
Affiliation: Schurmacher Center for Rehabilitation & Nursing
(2001 – present)

Henry S. Conston, Esq.
Self-employed attorney
Affiliation: Margaret Tietz Nursing & Rehabilitation Center (1978 – present)

Dolores M. Fernandez, Ph.D.
Professor, Hunter College, CUNY

Neil J. Heyman
President, Southern New York Association, Inc.
CEO, New York Health Care Alliance, LLC
Affiliation: Margaret Tietz Nursing & Rehabilitation Center

Harvey J. Ishofsky, Esq.
President/CEO, 877Spirits.com
(gift concierge service)
Affiliation: Margaret Tietz Nursing & Rehabilitation Center
(2005 – present)

Stefan A. Kampe
Retired

Steven D. Kantor, D.D.S.
Administrator, Grant & Kantor, D.D.S.
Affiliation: Beth Abraham Health Services
(2011 – present)

Rosemarie A. Loffredo
Retired

Cynthia L. Schwalm
Self-employed Healthcare Biotech Consulting

Mark H. Weinstein
President, Golden Oldies, Ltd.
(home furnishings)
Affiliations: Margaret Tietz Nursing & Rehabilitation Center (2007 – present), Center for Nursing & Rehabilitation
(2000 – present)

Kenneth R. Weisshaar
Retired

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The Bureau of Professional Credentialing has indicated that Michael S. Fassler, NHA license #02867, 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 1250 Waters Place, Tower 1, Suite 602, Bronx, New York 10461:

Kings	Queens	New York	Bronx
Richmond	Westchester		

The applicant proposes to serve the residents of the following counties from an office located at 55 Albany Avenue, Amityville, New York 11701:

Suffolk	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A ten year review of the following facilities was performed as part of this review:

Best Choice Home Health Care
Beth Abraham Health Services
Center for Nursing & Rehabilitation
CenterLight Healthcare MLTC
CenterLight Healthcare D & T Center
Margaret Tietz Nursing & Rehabilitation Center
Montefiore Medical Center
Schnurmacher Center for Rehabilitation & Nursing

The Bureau of Quality Assurance for Nursing Homes has indicated the following:

Beth Abraham Health Services was fined thirty thousand dollars ($30,000.00) pursuant to a stipulation and order dated June 2, 2010 for surveillance findings of April 27, 2009. Deficiencies were found under 10 NYCRR 415.12 Quality of Care, 415.20 Laboratory and Blood Bank and 415.26 Organization and Administration.

Center for Nursing & Rehabilitation was fined twenty four thousand dollars ($24,000.00) pursuant to a stipulation and order dated August 22, 2011 for surveillance findings of January 29, 2010. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) Report Allegations, 415.12 Quality of Care Highest Practicable Potential, 415.26 Administration and 415.20 Promptly Notify Physician of Lab Results.

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 Division of Certification and Surveillance has indicated the following:

Montefiore Medical Center was fined $18,000 in 2003 for violations of the Resident Working Hours regulation. Montefiore Dialysis Center was fined $52,000 in 2005 based on conditions of participation. Montefiore Medical Center was fined $14,000 in 2007 for failure to report suspected child abuse to the proper authorities.

The information provided by the Division of Certification and Surveillance has indicated that the hospital and D & T Center reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services 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 Bureau of Continuing Care Initiatives has indicated that the MLTC 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.

<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: May 18, 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 7th day of June, 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:
1633-L	320 MacDougal Street, Inc. (Bronx, Richamond, Kings, Queens, Nassau and New York Counties)
1712-L	Aide and Comfort, Inc. (Nassau, Suffolk, Westchester, Rockland, Queens, New York, Bronx, Kings, and Richmond Counties)
1688-L	Alissa Home Care, Inc. (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)
1944-L	Always Best Care of NY, LLC (Nassau and Suffolk Counties)
1667-L	B & M School of Health Careers, Inc. (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)
1623-L	Best Help Home Care Corp. (Kings and Bronx Counties)

1844-L	CareGivers by Design, Inc. (Westchester and Rockland Counties)
1765-L	Care Providers, Inc. d/b/a Home Helpers #58319 (Queens, Bronx, Kings, Richmond, New York, and Nassau Counties)
1919-L	Caring Moments Homecare, Inc. (New York, Nassau, Kings, Bronx, Queens, and Richmond Counties)
1587-L	CHDFS, Inc. (Bronx, Rockland, Kings, New York, and Queens Counties)
1689-L	Everyday Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
1986-L	Good Samaritan CareGivers, Inc., d/b/a Good Samaritan Home Health Agency (Allegany, Erie, Niagara, Cattaraugus, Genesee, Orleans, Chautauqua, Monroe, and Wyoming Counties)
1971-L	Ideal Home Care Services, Inc. (Suffolk, Nassau, New York, Bronx, Queens, Richmond and Kings Counties)
1969-L	J & A Hurley, Inc. d/b/a Home Instead Senior Care (Schenectady, Schoharie, Albany and Montgomery Counties)
1856-L	Life's Changing Seasons Eldercare, LLC (Onondaga, Oswego, Seneca, Cayuga, Cortland, Oneida, Madison and Tompkins Counties)
1706-L	K & D Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
1923-L	Marks Homecare Agency of NY, Inc. (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)
1798-L	NurseCore Management Services – New York, LLC (Livingston, Monroe, Ontario and Wayne Counties)

1889-L	PCDI Healthcare and Consultants of Texas, LLC (New York, Kings, Bronx, Queens, Richmond and Nassau Counties)
1965-L	Regina G. Yankey d/b/a Orange Homecare and Staffing Agency (Orange, Sullivan, Rockland, Dutchess, Westchester, Bronx, and Putnam Counties)
1800-L	Safe Haven Home Care, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)
1937-L	Queens Homecare Agency, Inc. (Bronx, Kings, New York, Queens, and Richmond Counties)
1939-L	Funzalo & Canteet, Inc. d/b/a Right at Home North Shore LI (Nassau, Suffolk, and Queens Counties)
1789-L	Senior Comfort Solutions, LLC d/b/a Comfort Keepers (Nassau and Suffolk Counties)
1977-L	Sephardic Home Care Services, Inc. (New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)
1973-L	T.A. Daniels Holdings, Inc. d/b/a Senior Helpers (Westchester County)
1975-L	Tayler Ashley Group, Inc. d/b/a Senior Helpers (Dutchess, Westchester, Orange, Putnam, Sullivan, and Ulster Counties)
1961-L	TriMed Home Care Services, Inc. (Nassau and Suffolk Counties)
1922-L	Your Choice Homecare Agency, Inc. (New York, Westchester, Kings, Queens, Bronx and Richmond Counties)
2113-L	Steuben County Public Health & Nursing Services (Steuben County)
1976-L	Parent Care, LLC (Kings, Richmond, Queens, New York, Bronx, and Nassau Counties)

2099-L	SeniorBridge Family Companies (NY), Inc. (See exhibit for counties listed)
2033-L	Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care (Niagara County)
2112L	CL Healthcare, Inc. (Bronx County)

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

June 7, 2012

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

Dialysis Services – Establish/Construct **Exhibit # 17**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	092158 B	DV Corp. d/b/a Riverside Dialysis (Westchester County)	Disapproval

Public Health and Health Planning Council

Project # 092158-B

DV Corp.
d/b/a Riverside Dialysis

County: **Westchester (Yonkers)**
Purpose: **Establishment and Brooklyn**

Program: **Dialysis Services**
Submitted: **November 27, 2009**

Executive Summary

Description

DV Corp. d/b/a Riverside Dialysis, seeks approval to establish and construct a 20-station dialysis facility at 145 Saw Mill Road, Yonkers, and change the ownership through the sale by its current sole member of 90% of the membership interests in the LLC to DaVita of New York, Inc. This application amends and supersedes CON #062342-B, which received State Hospital Review and Planning Council approval on February 1, 2007 and Public Health Council approval on March 2, 2007.

As CON #062342-B never achieved final approval, the current proposed 90% change in membership interest of the LLC from current sole member, Leelamma Mathai, to DaVita of New York, Inc. requires the Public Health and Health Planning Council to act on the entire proposal. With a new, current examination of Need, the Department finds Westchester County is now over capacity by 77 dialysis stations for residents and by 65 dialysis stations for patients.

DOH Recommendation

Disapproval.

Need Summary

Westchester County has a higher than average elderly population but a lower than average minority population. Westchester County is currently over capacity by 77 dialysis stations for residents and by 65 dialysis stations for patients. Additionally, many facilities in the county have very low utilization rates. Westchester County facilities could potentially face financial feasibility issues with the approval of this application.

Westchester County will have excess capacity through 2015, with no need for additional stations unless under extremely special circumstances.

Recommendations

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

Office of Health Systems Management
Disapproval.

Council Action Date
June 7, 2012.

Need Analysis

Background

The elderly are the fastest growing group of end-stage renal disease (ESRD) patients. Minority groups are at a greater risk of developing Type II Diabetes which is the leading cause of ESRD.

The proposed service area for this project is Westchester County. The 2009 estimated population is 955,962. Approximately 14.2% of the population in Westchester County, 133,835 residents, is over 65, which is above the NYS average of 13.4%. The minority population of Westchester County is 22.5%, which is below the state average of 26.6%.

Section 5 of Part 709.4 (10 NYCRR) states that approval of proposals to add 12 or more dialysis stations to a planning area should not jeopardize the quality of service provided at or the financial viability of other existing dialysis facilities or services within the planning area. Many Westchester dialysis clinics are operating at very low utilization levels. An addition of stations would further decrease utilization of surrounding facilities.

Regional Dialysis Center Utilization	***Stations***	***2006***	***2007***	***2008***
Mt Vernon Dialysis	24		0.00%	40.74%
DCI-Westchester	24	96.30%	97.22%	91.67%
Westchester MC-Valhalla	6	29.63%	40.74%	44.44%
Yorktown AKC	16	47.22%	75.00%	77.78%
Sound Shore Dialysis	24	112.96%	119.44%	106.48%
White Plains DC	25	68.44%	75.56%	74.67%
Peekskill DC	19	88.89%	78.36%	73.68%
Hudson Valley DC	20	97.78%	107.78%	110.00%
Port Chester Dialysis & Renal Ctr	15	88.89%	82.96%	74.07%
So Westchester DC	31	134.77%	138.35%	131.18%
Westchester AKC-DCI	20	103.33%	105.56%	90.00%
Yonkers DC	21	157.67%	146.03%	139.68%

Source: Island Peer Review Organization

Projected Need

The Department uses the following methodology to determine need for dialysis stations:

> One free standing station, calculated at 702 treatments per year (2.5 shifts per day x 6 days per week x 52 weeks x 90% = 702), can treat 4.5 patients per year. Freestanding Patient Treatments = 702 treatments / 4.5 patients per year = 156 treatments per patient per year.
>
> One hospital based station, calculated at 499 treatments per year per station (2.0 shifts/day x 6 days/week x 52 weeks x 80% = 499), can treat 3 patients per year. Hospital Based Patients Treatments = 499 treatments/ 3 patients per year = 166.33 treatments per patient per year.

Hospital-based stations treat fewer patients per year. Statewide, the majority of stations are free-standing as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.

The table below indicates that Westchester County is currently over capacity for dialysis stations and will have excess capacity through 2015. Projections for 2015 assume a growth rate of three percent:

	2009		2015	
	Total Patients Treated	*Total Residents Treated*	*Projected Total Patients Treated*	*Projected Residents Treated*
	1072	1016	1281	1214
# Freestanding Stations Needed	238	226	269	270
# Existing Stations including pipeline (29)	303	303	303	303
# w/Approval of This CON	315	315	315	315
# Unmet Need	-65	-77	-18	-33

***FS – Freestanding*
**** Based upon a three percent annual increase*

The number of patients being treated is significantly higher than the number of residents, indicating that facilities are treating patients from surrounding counties and that additional stations are not necessary to treat residents.

It is likely that the non-Westchester County residents seeking treatment are from Bronx County. The information below takes Bronx County into consideration:

Travel Time to Bronx County from Dialysis Providers in Westchester County (Mapquest)

Name	*Address 1*	*City*	*Travel Time, Distance*	*Approximate Occupancy*	*Stations*
Mount Vernon Dialysis Center	12 North Seventh Ave.	Mount Vernon	11 min, 5.82mi	41%	24
FMS-Southern Westchester Dialysis Center	44 Vark Street	Yonkers	16 min, 7.43mi	132%	31
FMS-Soundshore Dialysis Center	16 Guion Place	New Rochelle	14 min, 8.30mi	107%	24
Yonkers Dialysis Center	575 Yonkers Avenue	Yonkers	14 min, 6.84mi	90%	20
Proposed	*145 Saw Mill Road*	*Yonkers*	*16 min 10.26mi*		*20*

Each of the facilities in the table is closer to the Bronx than the proposed facility. Although two of the facilities are over capacity, two are not. Mount Vernon is operating at 40% with 24 stations. Yonkers is operating at 90% with 20 stations. There is a total of 16 vacant stations at these two facilities. DV Corp. proposes to add 20 new stations.

The table below shows the zip codes that would most likely be served by this new facility. As shown, the total number of patients treated in the accessible zip codes is 1,218, including home treatments, and represents a need for 271 stations.

BRONX	***Home HD***	***Home PD***	***In-Center HD***	***Unknown***	***Total***
10458		3	112		115
10461	1	2	77		80
10462		6	99		105
10463		2	109		111
10464	1		5		6
10466		2	166	1	169
10467	1	4	177		182
10468	1	6	123		130
10469		4	151		155

10470		1	17		18
10471	1	2	25		28
10475		2	117		119
Total	*5*	*34*	*1,178*	*1*	*1,218*

The table below details the existing resources in these zip codes. There are currently 307 stations in this service area, with another possible 16 stations available in Westchester County without the approval of this project. This indicates an excess of approximately 52 stations. This extra capacity is sufficient to treat approximately 234 patients from other areas of the Bronx not included as part of the above Bronx zip codes most likely to be served by the proposed facility.

Name	***Address 1***	***Zip***	***Stations***
Bedford Park Dialysis Center	3117 Webster Avenue	10467	21
Boston Post Road Dialysis Center	4000-4026 Boston Post Road	10475	25
BRNC at Jewish Home & Hospital	100 West Kingsbridge Road	10468	15
Bronx Dialysis Center	1615-1617 Eastchester Road	10461	25
Bronx River Nephro-Care, Inc	1616 Bronxdale Avenue	10462	30
Eastchester Road Dialysis Center	1515 Jarrett Place	10461	12
FMS-Eastchester	1695 Eastchester Road	10461	27
FMS-Morris Park	1325 Morris Park Avenue	10461	24
Kings Harbor Dialysis Center	2020 East Gun Hill Road	10469	9
Montefiore Med Center – Jack D Weiler Hosp of A Einstein College Div	1825 Eastchester Rd	10461	4
Montefiore Medical Center – Henry & Lucy Moses Div	111 East 210th Street	10467	17
Montefiore Medical Center - North Division	600 East 233rd Street	10466	9
New York Renal Associates, Inc	3468 Park Avenue	10468	40
Pelham Parkway Dialysis Center	1400 Pelham Parkway South	10461	25
Riverdale Dialysis Center	170 West 233rd Street	10463	24
Total			*307*

Conclusion

There is no need for additional dialysis stations in Westchester County.

The applicant has not met the requirements of 10 NYCRR Sections 670.6 and 709.4, which serve as the basis for the methodology to determine need for end-stage renal dialysis services.

The applicant has not met the requirements of 10 NYCRR Section 709.1(a)(5) to demonstrate the need for the services to be provided.

The applicant has not met the requirement of 10 NYCRR Section 709.1(a)(7) to demonstrate the potential contribution of the proposed facility to meet the health needs of medically underserved groups.

Allowing the addition of 20 dialysis stations in Westchester County will create excess capacity that would be detrimental to surrounding facilities.

Recommendation

From a need perspective, disapproval is recommended.

RESOLUTION

RESOLVED, that the Public Health Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of June, 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 disapprove the application referenced below to establish and construct a 20-station dialysis facility at 145 Saw Mill Road, Yonkers and change the ownership through the sale by its current sole member of 90% of the membership interests in the LLC to DaVita of New York, Inc., the application amends and supercedes #062342-B; and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER	APPLICANT/FACILITY
092158 B	DV Corp., d/b/a Riverside Dialysis

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

June 7, 2012

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

Residential Health Care Facility– Establish/Construct **Exhibit # 18**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	082143 E	OMOP, LLC d/b/a Orchard Manor, Inc. (Orleans County)	Deferred

Public Health and Health Planning Council

Project # 082143-E

OMOP, LLC
d/b/a Orchard Manor, Inc.

County: **Orleans (Medina)**
Purpose: **Establishment**

Program: **Residential Health Care Facility**
Submitted: **November 7, 2008**

Executive Summary

Description

OMOP, LLC, a limited liability company, is seeking approval to purchase the operation of Orchard Manor, Inc., a voluntary 160-bed residential health care facility (RHCF) located at 600 Bates Road, Medina. Ownership of the operation before and after the requested change is as follows:

Before		**After**	
Orchard Manor,Inc.	100%	OMOP, LLC	100%
Sole Member		*Sole Member*	
Medina Memorial Hospital		Moshe Scheiner	

The proposed members have ownership interest in additional RHCFs: Indian River Rehabilitation and Nursing Center, Gowanda Rehabilitation and Nursing Center, and Westledge Rehabilitation and Nursing Center. The applicant does not expect to enter into any administrative and consulting service arrangements.

DOH Recommendation

Contingent approval.

Need Summary

Orleans County is under the county bed need by 10 beds.

RHCF Bed Need – Orleans County	
2016 Projected Need	360
Current Beds	310
Total Resources	310
Unmet Need	50

Utilization at Orchard Manor and in Orleans County is below the expected 97.0% occupancy rate, with Orchard Manor's occupancy showing a 7% percent decrease from 89.3% in 2007 to 82.9% in 2009.

Program Summary

No adverse information has been received concerning the character and competence of any of the applicants. No changes in the program are proposed in this application.

Financial Summary

There are no project costs associated with this application. Purchase price of $100,000 will be met with cash at closing.

Budget:	*Revenues:*	*$ 9,434,232*
	Expenses:	*9,178,184*
	Gain/(Loss):	*$ 256,048*

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 submission is required.

Recommendations

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

Office of Health Systems Management
Approval contingent upon:

1. Completion of the final executed Stipulation Agreement by the Commissioner of DOH for Indian River Rehabilitation and Nursing Center. [LTC]
2. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease that is acceptable to the Department of Health. [BFA, CSL]
4. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of OMOP, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amendment to the Operating Agreement of OMOP, LLC, acceptable to the Department. [CSL]
6. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to enhance access to Medicaid residents. As a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:

    (a) Reach out to hospital discharge planners and make them aware of the facility's Medicaid Access Program;
    (b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
    (c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
    (d) Submit an annual report for two years to the Department which demonstrates progress with the implementation of the plan. The report should include, but not be limited to

    - Information on activities relating to (a) - (c) above;
    - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - Other factors as determined by the applicant to be pertinent.

    The Department reserves the right to require continued reporting beyond the two-year period. [RNR]

Council Action Date
June 7, 2012.

Need Analysis

Background

Utilization at Orchard Manor and in Orleans County is below the expected 97.0 percent occupancy rate, with Orchard Manor's occupancy showing a 7% percent decrease from 89.3 percent in 2007 to 82.9 percent in 2009.

There will be no change in the facility's beds or services upon approval.

Analysis

Orchard Manor, Inc. an existing Article 28 RHCF, has utilization below that of Orleans County as shown in the table below:

Facility/County/Region	*2007*	*2008*	*2009*
Orchard Manor Inc.	89.26%	90.73%	82.90%
Orleans County	91.31%	94.06%	88.30%

The facility's occupancy is almost three percentage points below the county average for each year under consideration. At the end of January 2010, the facility's case mix index (CMI) was .94 for 136 residents of whom five were Physical A's and one was a Physical B.

Ownership of the operation after the requested change is as follows:

Moshe Scheiner	100.00%

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Orchard Manor Nursing Home	Orchard Manor Rehabilitation and Nursing Center
Address	600 Bates Road Medina, NY 14103	Same
RHCF Capacity	160	Same
ADHC Program Capacity	NA	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Orchard Manor Inc. Sole Member Medina Memorial Health Care System, Inc.	OMOP LLC Sole Member Moshe Scheiner – 100%

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities	
Indian River Rehabilitation and Nursing Center	1/1/2007 to present
Gowanda Rehabilitation and Nursing Center	8/1/2007 to present
Sunshine Children's Home and Rehabilitation Center	1/1/2009 to present
West Ledge Rehabilitation and Nursing Center	1/1/2008 to present

- INDIVIDUAL BACKGROUND REVIEW:

Moshe Scheiner indicates he is self-employed as a nursing home operator. Mr. Scheiner discloses the following health facility interests:

Indian River Rehabilitation and Nursing Center	1/1/2007 to present
Gowanda Rehabilitation and Nursing Center	8/1/2007 to present
West Ledge Rehabilitation and Nursing Center	1/1/2008 to present
Sunshine Children's Home and Rehabilitation Center `	1/1/2009 to present

Character and Competence – Analysis:
No adverse information has been received concerning the character and competency of the applicant.

A review of the Indian River Rehabilitation and Nursing Center for the period reveals the following:

- The facility has agreed to a proposed fine of $8,000 pursuant to a Stipulation and Order issued February 28, 2012 for surveillance findings of February 23, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Free from Abuse, 415.4(b)(1)(ii) Investigate Report Allegations, 415.26 Administration and 415.27(a-c) Quality Assurance. The proposed stipulation agreement is in the final stages of review by the Commissioner of Health.

The review of Indian River Rehabilitation and Nursing Center for the time periods listed reveals that a substantially consistent high level of care has been provided, since there were no repeat enforcements.

The review of Gowanda Rehabilitation and Nursing Center, West Ledge Rehabilitation and Nursing Center and Sunshine Children's Home and Rehabilitation Center for the time periods listed reveals that a substantially consistent high level of care has been provided, since there were no enforcements.

Recommendation
From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Operations Transfer Agreement
The change in ownership of operation will be effectuated in accordance with the terms of the executed Operations Transfer Agreement, summarized below:

Seller:	Orchard Manor, Inc.
Purchaser:	OMOP, LLC
Dated:	September 10, 2008

Assets Transferred:	The business and operation of the facility: furniture, fixture and equipment, all transferable contracts; the name and the facility's current telephone number, fax numbers, e-mail addresses and web site; resident accounts; all other assets, except "Excluded Assets".
Assets Excluded:	All cash, cash equivalents, accounts receivable, deposits and investments with respect to the facility.
Liabilities Assumed:	All obligations for contracts and leases on or after the closing. All other liabilities related to the operation of the facilities arising after the closing shall be assumed by buyers.
Purchase Price:	$100,000
Payment Of Purchase Price:	Cash at closing

Lease Agreement and Medicaid Capital Reimbursement

OMOP, LLC will occupy the premise under the terms of a lease agreement, summarized as follows:

Lessor:	Orchard Manor, Inc.
Lessee:	OMOP, LLC
Premises:	160-Bed Skilled Nursing Facility located at 600 Bates Road, Medina, NY
Term:	7 Years with 1 (7 year) renewal option
Annual Rental:	$700,000
Other:	Tenant pays insurance, taxes, repairs & maintenance and utilities
Type:	Net, arms length

Operating Budget

The applicant has submitted an operating budget, in 2011 dollars, for the first year of operations subsequent to the change in operator, summarized below:

	Per Diem	Total
Revenues:		
Medicaid	$126.10	$5,273,502
Medicare	425.00	2,537,250
Private Pay/Other		1,623,480
	429.00	
Total		$9,434,232
Expenses:		
Operating	$156.11	$8,478,184
Capital	$12.89	$700,000
Total		$9,178,184
Net Income		$256,048
Utilization(Patient days)		54,310
Occupancy		93.00%

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

- The capital component is based on return on and return of reimbursement methodology.
- Overall utilization is projected at 93%, which is 6% greater than the 2010 utilization related to the 160 Total RHCF beds reported, this increase is due to the seller changing the admissions director position for

a part time to a full time position, allow for greater referrals from hospitals in the surrounding Buffalo area. They have also indicated that the closure a several nursing homes in the Buffalo area has resulted in an increased number of referrals to the facility and also the number of referrals from Medina Memorial Health System has increased as well. Utilization by payor source is expected as follows:

Medicare	11.00%
Medicaid	77.00%
Private Pay	12.00%

- Breakeven occupancy is projected at 90.50%

Currently, Medicaid capital reimbursement is based on interest and depreciation reimbursement methodology. After the change in ownership, capital cost reimbursement will be based on return of equity reimbursement methodology. The facility has a remaining useful life of 4 years.

Presented as BFA Attachment G is a schedule comparing capital reimbursement vs. lease rental payments, which indicates an average Medicaid reimbursement shortfall of $412,994 to 2021, which is the year the lease expires.

Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be financed by equity of $100,000.

The applicant has estimated working capital requirements at $1,529,698, which is approximately two months' of first year expenses. The proposed members will provide equity of $779,698 toward working capital; this will be provided from Mr. Stern in full. A Letter of Interest has been provided for the working capital loan, indicating 6% interest over a 3-year term from Bank Leumi. The bank has supplied a Letter of Interest for the working capital loan.

Review of BFA Attachment A reveals the collective availability of acquisition and working capital equity funds. BFA Attachment C, the applicants' pro-forma balance sheet, indicates that the applicant will initiate operation with member's equity of $879,698. The submitted budget indicates that a net income of $256,048 would be maintained during the first year following change in ownership. The budget appears reasonable.

As shown on BFA Attachment B, the Financial Summary for Orchard Manor Nursing Home, had an average negative working capital position and an average positive net asset position, and generated an average net loss of $8,107 during the period 2008-2010. In 2009, the facility experienced a $279,585 loss. The reason for the loss is two-fold. In 2009, the facility had a cut in the Medicaid reimbursement rate as well as a decline in admissions and a lower census at the facility due to a decline in nursing home demand in the market area. To correct the loss, the facility has embarked on an aggressive marketing campaign, using various media to reach out to potential patients. This campaign appears to be working. As of December 2010, the facility has brought the loss to only $17,627, a reduction of over $250,000 from the previous year.

As shown on BFA Attachment D, the Financial Summary for Indian River Rehabilitation and Nursing Center, had an average negative working capital position and an average positive net asset position, and generated an average net income of $1,019,393 during the period 2008-2010.

The loss for 2008 was caused by the facility still being in its first two years of operation under the new owners. The facility changed ownership on January 1, 2007. The facility has improved their fiscal position during the period 2008 through 2010, and the facility has been able to achieve a significant net income in 2010, of 1.9 million dollars.

As shown on BFA Attachment E, the Financial Summary for Gowanda Rehabilitation and Nursing Center had average negative working capital and net asset positions, and generated an average net income of $678,267 during the period 2008-2010. The loss in 2008 and 2009 were caused due to the facility starting up operations under the new owners as of August 1, 2007, and not receiving their revised rate as of yet. The facility has improved their fiscal position during 2008 and 2009, and the facility has been able to achieve a positive net income in 2010 of 3.8 million dollars, due to the facility receiving their revised rates and a retroactive rate adjustment.

As shown on BFA Attachment F, the Financial Summary for West Ledge Rehabilitation and Nursing Center, had average negative working capital and net asset positions, and generated an average net loss of $74,746 during the period 2008-2010. The loss was caused by the facility still being under its initial rates from the first year of operation under a new owner. The facility's change in ownership happened January 1, 2008. The facility will have their rates adjusted to show a higher rebased rate and they will receive a retroactive reimbursement check for the rebased rate from the change of ownership. In 2010, it appears that the facility received the rebased rates and the retroactive reimbursement check, as the net income for 2010 was $1,668,929.

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.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Member
BFA Attachment B	Financial Summary, Orchard Manor, Inc. for 2008-2010
BFA Attachment C	Pro-forma Balance Sheet, Orchard Manor, d/b/a OMOP, LLC
BFA Attachment D	Financial Summary, Indian River Rehabilitation and Nursing Center for 2008-2010
BFA Attachment E	Financial Summary, Gowanda Rehabilitation and Nursing Center for 2008-2010
BFA Attachment F	Financial Summary, West Ledge Rehabilitation and Nursing Center for 2008-2010
BFA Attachment G	Financial Summary, Sunshine Children's Home and Rehabilitation Center for 2010-2011
BFA Attachment H	Comparison of Reimbursement vs. Lease Rental and Debt Service
BFA Attachment I	Establishment Checklist