

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

**AGENDA**

*August 9, 2012*

*10:15 a.m.*

*Century House  
997 New Loudon Road (Route 9)  
Main Ball Room  
Latham, New York 12110*

**I. INTRODUCTION OF OBSERVERS**

Dr. William Streck, Chairman

**II. APPROVAL OF MINUTES**

June 7, 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**

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

**D. Report of the Office of Health Insurance Programs**

Elizabeth Misa, Medicaid Deputy Director, Office of Health Insurance Programs

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

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

**IV. PUBLIC HEALTH SERVICES**

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

Dr. Boufford, Chair of the Public Health Committee

**V. HEALTH POLICY**

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

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

**VI. REGULATION**

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

**Exhibit #2**

Dr. John Palmer, Vice Chair

**For Emergency Adoption**

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

**For Discussion**

Section 400.25 of Title 10 NYCRR – Nursing Quality Indicators

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

**BOOK A**

**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**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                      | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|---|---------------------------------------|
| 1. | 121157 C             | Northern Westchester Hospital<br>(Westchester County) | Contingent Approval                   |

**Ambulatory Surgery Center – Construction**

**Exhibit #4**

|    | <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u> |
|----|---------------|---|--------------------------------|
| 1. | 112369 C      | Memorial Hospital for Cancer and Allied Diseases<br>(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**

**Ambulatory Surgery Centers – Construction**

**Exhibit #5**

|    | <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u> |
|----|---------------|---|--------------------------------|
| 1. | 121208 C      | Hospital for Special Surgery<br>(New York County)<br>Ms. Regan - Interest | Contingent Approval            |

**Residential Health Care Facility – Construction**

**Exhibit #6**

|    | <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u> |
|----|---------------|---|--------------------------------|
| 1. | 121432 C      | Greater Harlem Nursing Home<br>Company Inc<br>(New York County)<br>Mr. Fassler – Interest<br>Mr. Fensterman – Recusal | Contingent Approval            |

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

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

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

**Exhibit #7**

|    | <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|----|---------------|--|--------------------------------|
| 1. | 071077 C      | North Sea Associates, LLC d/b/a<br>The Hamptons Center for<br>Rehabilitation and Nursing<br>(Suffolk County)<br>Mr. Fensterman – Recusal                     | Disapproval                    |
| 2. | 112096 C      | Nesconset Acquisition, LLC d/b/a<br>Nesconset Center for Nursing<br>and Rehabilitation<br>(Suffolk County)<br>Mr. Fensterman – Abstaining                    | Disapproval                    |
| 3. | 071024 C      | Long Beach Memorial Nursing<br>Home, Inc. d/b/a Komanoff Center<br>for Geriatric and Rehabilitation<br>Medicine<br>(Nassau County)<br>Mr. Fassler - Interest | Disapproval                    |

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

**Residential Health Care Facility Ventilator Bed– Construction**

**Exhibit #8**

|    | <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|----|---------------|--|--------------------------------|
| 1. | 072112 C      | Oakwood Operating Co., LLC<br>d/b/a Affinity Skilled Living and<br>Rehabilitation Center (Suffolk<br>County) | Contingent Approval            |

**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 #9**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                                    | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|---|---------------------------------------|
| 1. | 111142 B             | Stoneleigh Avenue Pain Management ASC, LLC (Putnam County)          | Contingent Approval                   |
| 2. | 121353 E             | Crystal Run Ambulatory Surgery Center of Middletown (Orange County) | Contingent Approval                   |

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

**Exhibit #10**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|---|---------------------------------------|
| 1. | 121340 E             | Metro Community Health Center (New York County) | Contingent Approval                   |

**Residential Health Care Facilities – Establish**

**Exhibit 11**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 121103 E             | HRNC Operating, LLC d/b/a Highland Rehabilitation and Nursing Center (Orange County) | Contingent Approval                   |
| 2. | 121168 E             | Oak Hollow NC Corp. d/b/a Oak Hollow Nursing Center (Suffolk County)                 | Contingent Approval                   |
| 3. | 121174 E             | Crest Hall Corp. d/b/a Lakeview Rehabilitation and Care Center (Suffolk County)      | Contingent Approval                   |

|    |          |  |                     |
|----|----------|--|---------------------|
| 4. | 121175 E | Crown Nursing Home Associates, Inc.<br>d/b/a Crown Nursing and Rehabilitation Center<br>(Kings County) | Contingent Approval |
|----|----------|--|---------------------|

**Restated Certificate of Incorporation**

**Exhibit #12**

**Applicant**

**E.P.R.C. Recommendation**

|    |  |          |
|----|--|----------|
| 1. | The Methodist Homes For The Aging of the Wyoming Conference in the State of New York | Approval |
|----|--|----------|

**Certificate of Dissolutions**

**Exhibit #13**

**Applicant**

**E.P.R.C. Recommendation**

|    |                                   |          |
|----|-----------------------------------|----------|
| 1. | The Falck Foundation, Inc.        | Approval |
| 2. | St. Clare Manor of Lockport, N.Y. | Approval |
| 3. | St. Joseph’s Manor of Olean, N.Y. | Approval |
| 4. | St. Luke Manor of Batavia. N.Y.   | Approval |
| 5. | St. Mary’s Manor                  | 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 #14**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----------------------|--|---------------------------------------|
| 1.                   | 121180 E<br>Gotham Health FQHC<br>(New York County)<br>Mr. Fassler – Interest<br>Dr. Martin – Interest<br>Dr. Sullivan - Recusal | Contingent Approval                   |

**Residential Health Care Facility – Establish**

**Exhibit #15**

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1. 082143 E   | OMOP, LLC d/b/a Orchard Manor, Inc.<br>(Orleans County)<br>Mr. Booth - Interest | Contingent Approval            |

**Certified Home Health Agencies – Establish**

**Exhibit #16**

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|---------------|--|--------------------------------|
| 1. 121135 E   | Genesee Region Home Care Association, Inc. d/b/a Lifetime Care<br>(Monroe County)<br>Mr. Fassler - Interest<br>Mr. Booth – Recusal<br>Ms. Hines- Recusal<br>Mr. Robinson – Recusal | Approval                       |
| 2. 121182 C   | McAuley-Seton Home Care Corporation<br>(Niagara County)<br>Mr. Booth - Interest  | Contingent Approval            |

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #17**

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>E.P.R.C. Recommendation</u> |
|---------------|---|--------------------------------|
| 1. 2141 L     | Clinton County Department of Health<br>(Clinton County)<br>Mr. Booth - Interest | Contingent Approval            |

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**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**

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

**BOOK B**

**Report of the Committee on Establishment and Project Review**

Jeffrey Kraut, Chair

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

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

**NO APPLICATIONS**



**CATEGORY 2:** Applications Recommended for Approval with the Following:

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

**CON Applications**

**Certified Home Health Agencies – Construction**

**Exhibit #18**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 121210 C             | HHC Health and Home Care<br>(New York County)<br>Mr. Fassler – Interest<br>Dr. Martin – Interest<br>Ms. Regan – Interest<br>Dr. Sullivan – Recusal | Contingent Approval                   |
| 2. | 121226 C             | Nursing Sisters Home Care, Inc.<br>d/b/a Catholic Home Care<br>(Suffolk County)<br>Ms. Regan - Interest  | Contingent Approval                   |
| 3. | 121249 C             | Visiting Nurse Services in<br>Westchester, Inc.<br>(Westchester County)<br>Ms. Regan – Interest<br>Ms. Hines – Abstaining                          | Contingent Approval                   |
| 4. | 121212 C             | Dominican Sisters Family Health<br>Service, Inc.<br>(Westchester County)<br>Ms. Regan – Interest   | Contingent Approval                   |
| 5. | 121243 C             | United Odd Fellow and Rebekah<br>Home LTHHCP<br>(Bronx County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest                                   | Contingent Approval                   |
| 6. | 121216 C             | Visiting Nurse Association of<br>Long Island, Inc.<br>(Nassau County)<br>Ms. Regan – Interest  | Contingent Approval                   |

|    |          |   |                     |
|----|----------|---|---------------------|
| 7. | 121291 C | The Wartburg Home<br>(Westchester County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest                                       | Contingent Approval |
| 8. | 121448 C | UPR Care Corp., Inc. d/b/a Cold<br>Spring Hills Center for<br>Nursing & Rehabilitation<br>(Nassau County)<br>Ms. Regan – Interest | Contingent Approval |
| 9. | 121424 C | VillageCare Long Term Home<br>Health Care Program<br>(New York County)<br>Mr. Kraut – Interest<br>Ms. Regan – Interest            | Contingent Approval |

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**NO APPLICATIONS**

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**Certified Home Health Agencies – Construction**

**Exhibit #19**

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|---------------|--|--------------------------------|
| 1.            | 121203 C<br>Personal Touch Home Aides of<br>New York Inc.<br>(Kings County)<br>Ms. Hines – Abstaining<br>Dr. Martin – Abstaining<br>Ms. Regan – Interest | Contingent Approval            |

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**B. APPLICATIONS FOR ESTABLISHMENT AND 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**

**Certified Home Health Agencies – Establishment**

**Exhibit #20**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 121309 E             | Center Light Certified Home Health Care Agency<br>(Kings County)<br>Mr. Fassler – Recusal<br>Ms. Regan – Interest            | Contingent Approval                   |
| 2. | 121256 E             | Isabella Care at Home, Inc.<br>(New York County)<br>Dr. Berliner – Recusal<br>Mr. Fassler – Interest<br>Ms. Regan – Interest | Contingent Approval                   |
| 3. | 121252 E             | Jewish Home Lifecare,<br>Community Services<br>(New York County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest           | Contingent Approval                   |
| 4. | 121222 E             | Lutheran CHHA, Inc.<br>(Kings County)<br>Ms. Regan – Interest  | Contingent Approval                   |

- |    |          |   |                     |
|----|----------|---|---------------------|
| 5. | 121247 E | Queens Long Island Certified Home Health Agency, LLC<br>(Queens County)<br>Ms. Regan – Interest | Contingent Approval |
| 6. | 121446 E | South Nassau Communities Hospital<br>(Nassau County)<br>Ms. Regan – Interest                    | Contingent Approval |

**CATEGORY 3:** Applications Recommended for Approval with the Following:

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

**Certified Home Health Agencies – Establishment**

**Exhibit #21**

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|---------------|--|--------------------------------|
| 1.            | 121286 E<br>Lott Community Home Health Care, Inc.<br>(New York County)<br>Ms. Regan - Interest | Contingent Approval            |

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

**IX. NEXT MEETING**

Planning Committee - September 19, 2012, NYC  
Committee Day – September 201, 2012, NYC  
Full Council – October 11, 2012

**X. ADJOURNMENT**

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

**Minutes**  
**June 7, 2012**

The meeting of the Public Health and Health Planning Council was held on Thursday, June 7, 2012, at the New York State Department of Health, 90 Church Street, Rooms 4A and 4B, New York, New York. Chairman, Dr. William Streck, and Vice Chairman Jeffrey Kraut presided.

**COUNCIL MEMBERS PRESENT:**

Dr. William Streck, Chair  
Dr. Howard Berliner  
Dr. Jodumatt Bhat  
Dr. Jo Ivey Boufford  
Mr. Michael Fassler  
Dr. Carla Boutin-Foster  
Dr. Angel Gutiérrez  
Mr. Jeffrey Kraut  
Mr. Arthur Levin  
Dr. Glenn Martin

Ms. Ellen Rautenberg  
Mr. Peter Robinson  
Dr. John Ruge  
Dr. Ann Marie Theresa Sullivan  
Dr. Anderson Torres  
Dr. Patsy Yang  
Commissioner Shah (ex-officio)

**DEPARTMENT OF HEALTH STAFF PRESENT:**

Dr. Guthrie Birkhead (via video Albany)  
Ms. Anna Colello (via video Albany)  
Mr. Richard Cook (via video Albany)  
Mr. Christopher Delker  
Ms. Laura Dellehunt  
Mr. James Dering  
Ms. Colleen Frost  
Ms. Sandy Haff (via video Albany)  
Ms. Mary Ellen Hennessy (via video Albany)  
Ms. Karen Lipson

Mr. Keith McCarthy (via video Albany)  
Ms. Karen Madden  
Ms. Sylvia Pirani (via video Albany)  
Ms. Linda Rush (via video Albany)  
Mr. Steven Smith (via video Albany)  
Ms. Lisa Thomson

**INTRODUCTION:**

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

**MEETING OVERVIEW:**

Mr. Kraut gave a brief overview of the Council meeting agenda.

**APPROVAL OF THE MINUTES OF APRIL 5, 2012:**

Mr. Kraut asked for a motion to approve the April 5, 2012 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval which was seconded by Dr. Ruge. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

**REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

Mr. Kraut introduced Commissioner Shah to give the Department of Health Activities Report.

Dr. Shah stated Governor Cuomo announced an agreement with the Attorney General and State Legislature on a comprehensive reform package to reduce prescription drug abuse. The illicit use of prescription medicines has become a growing problem, causing nearly 15,000 fatalities a year due to overdoses. The Department has also seen a dramatic rise in the use of prescription painkillers for nonmedical reasons, and we have seen sales of opiod painkillers quadruple between 1999 and 2010.

Dr. Shah explained the new law will address the distribution and tracking of prescription drugs in New York, including implementation of a “real time” prescription drug monitoring registry to provide timely and enhanced information to practitioners and pharmacists.

The Department’s Prescription Monitoring Program Registry will be updated and modernized to significantly reduce opportunities for “doctor shopping” by individuals seeking to illegally obtain prescriptions from multiple providers. Practitioners and pharmacists will be able to securely access the Registry to view a patient’s controlled substance history. They will be required to consult the Registry before prescribing or dispensing drugs that are most likely to be abused or diverted. The legislation also will require electronic prescribing or e-prescribing for all controlled substances, with limited exceptions.

Dr. Shah advised New York will be one of the first states to transition to e-prescribing. This is an important tool to eliminate diversions that occur due to forgery, alteration, or theft of prescription paper.

Dr. Shah also added that Governor Cuomo announced that the State will pursue a groundbreaking Medicaid 1115 waiver amendment that would provide \$10 billion over five years to fully implement Medicaid Redesign initiatives and prepare for national health care reform. The waiver would allow New York to reinvest a portion of the \$17.1 billion in federal savings that will be realized over the next five years as a result of the State's implementation of MRT recommendations.

Dr. Shah stated the Governor noted when announcing the waiver, New York has taken the first steps to transform our health care system. The MRT action plan not only has reduced Medicaid costs but also has led to the creation of programs like Health Homes and Patient-centered Medical Homes that will ensure quality care for high-cost, high-need individuals. The reinvestment of funds would also help to modernize and strengthen our State's fragile health care safety net and provide expanded primary care access in light of the expected increase in demand for these services.

Dr. Shah explained that as part of the application for the waiver, the State will be launching an extensive public engagement effort, including public forums, topic-specific webinars, focus groups, and more. We witnessed the success of such public efforts during the MRT process and look forward to gathering input and ideas from citizens and stakeholders to advance this effort. New York's Health Insurance Exchange is yet another project the Department is working on with other agencies.

Dr. Shah noted that the Department also has exciting news on the health information technology front. A new health IT initiative was announced to make New York a hub for high-tech jobs. The New York Digital Health Accelerator is a joint venture of the New York City Investment Fund, the New York Health Collaborative, and the Department to support companies that are developing leading-edge technology products for care coordination, patient engagement, analytics, and message alerts for health care providers.

Dr. Shah explains the focus will be on developing products to support MRT efforts, particularly the Health Homes program. Twelve companies will be selected to receive awards of up to \$300,000 each, along with mentoring from senior-level executives at leading hospitals and health providers in the State. The awards are targeted to early stage and growth-stage companies. They will help attract additional investment and create jobs. The \$4.2 million program is projected to create 1,500 jobs over the next five years and generate \$150 million to \$200 million in additional investments, which will spur further innovation in health IT.

Dr. Shah provided a brief update on public health. The Department continues to work closely with local health departments to prevent disease and quickly respond to any health threats that arise. For example, the Department has been working closely with counties in the Central New York region to raise public awareness about Eastern Equine Encephalitis. Eastern Equine Encephalitis, or Triple E, is a rare, but potentially fatal mosquito-borne disease that is primarily found in four counties in the Central New York region. There have been only five reported cases of EEE in New York dating back to 1971, but cases in each of the last three years – all of them resulted in fatalities, including a four-year-old girl who died from EEE last summer.

The Department and local health departments are collaborating to raise awareness about potential health risks and inform New Yorkers about personal protective measures they should take to reduce these risks. Mosquito surveillance began on May 28 to determine where EEE is present. The findings will be shared with the local counties to determine the best strategies to control mosquitoes, including the option of aerial spraying. The collaboration has been very positive and has generated public attention about EEE and the importance of taking protective measures.

Dr. Shah concludes by acknowledging the service of some very brave New Yorkers. There are nearly 60,000 EMS professionals in New York who provide critical and lifesaving services and many times, their own safety is at risk. Each April, a special ceremony is held to honor members of New York's Emergency Medical Services (EMS) who died in the line of duty. We pay tribute to these heroes by adding their names to the "Tree of Life" Memorial at the Empire State Plaza in Albany. The Lieutenant Governor honored both active EMS members and those we have lost. There are 42 names on the Memorial.

Dr. Shah stated the good news is that there were no duty-related deaths in 2011, which meant that no names needed to be added to the Memorial this year. Let's hope 2012 is a safe year for all EMS members as well. This concludes my report.

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.

Many members had questions and comments relating to Dr. Shah's report.

To review Dr. Shah's full report and questions and comments please refer to pages 8 through 24 of the attached transcript.

## **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.

Mr. Cook gave an update regarding the RFA related to the CHHA applications. The Department proposes the applications be split up over the next two meeting cycles. Mr. Cook stated the Department will provide summaries so that each member would have a sense of the Departments rationale for their recommendation.

To review the full report Office of Health Systems Management and the questions and comments please refer to pages 25 through 28 of the attached transcript.



## **REPORT OF THE OFFICE OF HEALTH INFORMATION TECHNOLOGY TRANSFORMATION ACTIVITIES**

Dr. Streck introduced Mr. Smith to give the report of the Office of Health Information Technology Transformation activities

Mr. Smith stated as everybody knows Commissioner Shah is a big proponent of Health Information Technology, so the office has been particularly busy since his arrival. Mr. Smith discussed Meaningful Use. The Meaningful Use program to this date in New York State has been paid over \$210 million to hospitals and eligible professionals.

Mr. Smith gave an update regarding the All Payer Data Warehouse. People may be aware that our office received funding through the state Level 1 health insurance exchange establishment grant to begin the APD activity. So, there are a number of initiatives underway. Another major initiative that's underway in relationship to the APD is the drafting of regulation. And, finally, we're most excited about on an immediate basis is we're in the process of a contract to establish a proof of concept for the APD. And basically what the proof of concept will do is allow us to aggregate existing public and private data sets specifically data from SPARCS, Medicaid and NYQA.

To review the full report of the Office of Health Information Technology Transformation with questions and comments please refer to pages 29 through 33 of the attached transcript.

## **REPORT OF THE OFFICE OF PUBLIC HEALTH ACTIVITIES**

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

Dr. Birkhead provided an update on the Department's effort around public health accreditation. There is a new national public health accreditation board for state and local health departments, and the Department has embarked on the path of moving toward accreditation. The Department has put forward a letter of intent to the national board and the Department is busy working on the pre-requisite that we need to go ahead with a full application. A community health assessment is being put together by our data department. Dr. Birkhead noted that the State Health Improvement Plan which the PHHPC Public Health Committee under Dr. Boufford's leadership is helping the Department with this process.

To review the full report of the Office of Public Health please refer to pages 34 through 37 of the attached transcript.

## **PUBLIC HEALTH SERVICES**

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

Next, Dr. Streck asked Dr. Boufford to report on the Activities of the Committee on Public Health.

Dr. Boufford noted that the Committee has been focused on three areas. The Prevention Agenda, which we are in the process, that process is in terms of revision for 2013 to 2017, and then its role as part of what are the conditions on the voluntary accreditation process, which the Committee is charged to oversee. The Committee has also been working with Dr. Rugge's Health Planning Committee very closely, engaged at every step of the way on the re-engineering and provisions of the CON process. The Statement Health Improvement Plan is being developed with the leadership of the Public Health Committee and an Ad Hoc Committee that represents multiple stakeholders across the state. These are state level organizations, many of whom have antenna eye branches, groups at the local level which we hope they will help us to mobilize as the implementation stage goes forward. There are 21 members of that committee and other people coming forward.

Dr. Boufford stated that a number of localities that were able to get small grants from a HEAL to actually implement and evaluate the results of what they did. She noted that the Committee will need to pay attention to after the planning stage and the priority setting stage helping to support implementation and also to build capacity at the local level for ongoing implementation and evaluation of health action in multi-state cultured groups. To assist with this process, an Ad Hoc Meeting will be held to receive formal feedback, to ratify the priority areas and to have a proposal for the group to consider and five working groups, one for each of the priority. Areas with a co-leadership by the appropriate technical experts at the health department and private sector organization that works in those areas. And each of these groups will consist of 15 to 19 participants. These groups will be working over the summer to take these primary prevention objectives, develop, identify what health outcomes they wish to see within those, how they propose to tackle them, who will need to be involved to make it work, how they are going to measure their success and the sort of timetable for implementation at local levels.

Dr. Boufford further discussed that New York has been awarded a \$200,000 grant from the Robert Wood Johnson Foundation and that Dr. Birkhead and Ms. Pirani will help manage. Dr. Boufford also stated that at the May 24, 2012 Public Health Committee meeting Julie Wilhems van Dijk, Executive Director of the Robert Wood Johnson county rankings project out of Wisconsin, the match program which really looks at a set of determinants that are health determinants and social determinants like economic development, literacy rates, educational levels, that are available at county levels nationally. The Committee spent time during her presentation talking about the New York results by county.

Dr. Boufford concluded by stating that after the upcoming Ad Hoc Committee meeting, there will be a plan of action to report at the upcoming Council meeting. To review the full report of the Activities of the Committee on Public Health with questions and comments. Please refer to pages 37 through 46 of the attached transcript.

## **HEALTH POLICY**

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

Under the Category Health Policy, Dr. Streck introduced Dr. Ruge to update the Council on the work of the Committee on Health Planning.

Dr. Ruge stated that the Committee by unanimous vote consideration will bring forth a report to the Council which includes a statement of mission and vision for CON and also 13 principles for reform, broader reform going forward followed by nine concrete recommendations for administrating streamlining of the process. Dr. Ruge thanked members of the committee as well as and the Department staff for their perseverance. Dr. Ruge also thanked Dr. Boufford for bringing the Public Health Committee and generating the broader platform for this work. Dr. Ruge acknowledged Mr. Streeter for writing background reports and Mr. Burke who provided background for topic and going forward.

Dr. Ruge motioned for adoption of the Committee report with the mission, vision recommendations for reform and nine specific recommendations for streamlining. The motion to adopt was seconded by Dr. Gutiérrez. The motion carries.

Dr. Streck thanked Dr. Ruge and the Committee. Please see pages 46 through 69 of the attached transcript.

## **REGULATION**

Dr. Streck introduced Dr. Gutiérrez to give his Report of the Committee on Codes, Regulations and Legislation.

### **For Emergency Adoption**

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

Dr. Gutiérrez introduced Subpart 86-2 of Title 10 NYCRR for emergency adoption regarding Nursing Homes Sprinkler Systems. Dr. Gutiérrez motioned for emergency adoption which was seconded by Dr. Berliner. The motion to for emergency adoption carried.

### **For Discussion**

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

Dr. Gutiérrez explained that Subpart 86-2 of Title 10 NYCRR is on the agenda for discussion as part of the process for regular adoption. It is currently going through the regulatory process. Once it completes the review process and the public comment period it will be brought back to PHHPC for consideration for adoption.

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

Next, Dr. Gutiérrez briefly discussed the Information Policy and Other Reporting Requirements for the Statewide Planning and Research Cooperative System also known as the SPARCS provision.

Dr. Gutiérrez concluded his report. Please see pages 69 through 71 to review the details of the regulation.

**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**

**Acute Care – Construction**

**Exhibit #3**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>Council Action</u></b> |
|----|----------------------|---|------------------------------|
| 1. | 112323 C             | New York Presbyterian Hospital –<br>Columbia Presbyterian Center<br>(New York County)<br>Dr. Boutin Foster- Recusal | Contingent Approval          |

Dr. Boutin-Foster exited the meeting room declaring a conflict. Mr. Kraut introduced application 112323 and motioned for approval, Dr. Berliner seconded the motion. The motion to approve carried with Dr. Boutin-Foster’s noted recusal. Dr. Boutin-Foster returned to the meeting room. Please see pages 75 and 76 of the attached transcript.

|    |          |  |                     |
|----|----------|--|---------------------|
| 2. | 121088 C | Millard Fillmore Suburban<br>Hospital<br>(Erie County)<br>Mr. Booth - Interest | Contingent Approval |
|----|----------|--|---------------------|

Mr. Kraut introduced CON 121088 and 121093 and noted for the record that Mr. Booth has in interest on application 121088 and Mr. Fassler has an interest on application 121093. Mr. Kraut motioned for approval for both applications which was seconded by Dr. Gutiérrez. The motion carried with the noted interests. Please see pages 77 through 79 of the transcript.

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

**Exhibit #5**

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 1.            | 121093 C<br><br>St. Cabrini Nursing Home<br>(Westchester County)<br>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 – Construct Exhibit #6**

|    | <u>Number</u> | <u>Applicant/Facility</u>    | <u>Council Action</u> |
|----|---------------|------------------------------|-----------------------|
| 1. | 121169 E      | NYHB, Inc.<br>(Kings County) | Contingent Approval   |

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

|    | <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|----|---------------|--|-----------------------|
| 1. | 112179 B      | Amsterdam REC, LLC d/b/a<br>Amsterdam Regional Eye Center<br>(Montgomery County) | Contingent Approval   |
| 2. | 112379 B      | The Surgery Center at Orthopedic<br>Associates, LLC<br>(Dutchess County)         | Contingent Approval   |

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

|    | <u>Number</u> | <u>Applicant/Facility</u>                    | <u>Council Action</u> |
|----|---------------|--|-----------------------|
| 1. | 101101 B      | Street Corner Clinic, Inc.<br>(Kings County) | Contingent Approval   |

**Restated Certificate of Incorporation Exhibit #9**

| <u>Applicant</u>  | <u>Council Action</u> |
|---|-----------------------|
| The Elizabeth Church Manor Nursing Home Corporation     | Approval              |
| The James G. Johnston Memorial Nursing Home Corporation | Approval              |

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

| <u>Applicant</u> | <u>Council Action</u> |
|------------------|-----------------------|
|------------------|-----------------------|

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #12**

| <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----------------------|--|------------------------------|
| 1633-L               | 320 MacDougal Street, Inc.<br>(Bronx, Richamond, Kings,<br>Queens, Nassau and New York<br>Counties)                                | Contingent Approval          |
| 1712-L               | Aide and Comfort, Inc.<br>(Nassau, Suffolk, Westchester,<br>Rockland, Queens, New York,<br>Bronx, Kings, and Richmond<br>Counties) | Contingent Approval          |
| 1688-L               | Alissa Home Care, Inc.<br>(Kings, Bronx, Queens,<br>Richmond, New York, and Nassau<br>Counties)                                    | Contingent Approval          |
| 1944-L               | Always Best Care of NY, LLC<br>(Nassau and Suffolk Counties)   | Contingent Approval          |
| 1667-L               | B & M School of Health Careers,<br>Inc.<br>(New York, Kings, Bronx,<br>Richmond, Queens, and<br>Westchester Counties)              | Contingent Approval          |
| 1623-L               | Best Help Home Care Corp.<br>(Kings and Bronx Counties)  | Contingent Approval          |
| 1844-L               | CareGivers by Design, Inc.<br>(Westchester and Rockland<br>Counties)   | Contingent Approval          |
| 1765-L               | Care Providers, Inc. d/b/a Home<br>Helpers #58319<br>(Queens, Bronx, Kings,<br>Richmond, New York, and Nassau<br>Counties)         | Contingent Approval          |

|        |  |                     |
|--------|--|---------------------|
| 1919-L | Caring Moments Homecare, Inc.<br>(New York, Nassau, Kings, Bronx,<br>Queens, and Richmond Counties)  | Contingent Approval |
| 1587-L | CHDFS, Inc.<br>(Bronx, Rockland, Kings, New<br>York, and Queens Counties)  | Contingent Approval |
| 1689-L | Everyday Care, Inc.<br>(New York, Bronx, Kings,<br>Richmond, Queens and Nassau<br>Counties)  | Contingent Approval |
| 1971-L | Ideal Home Care Services, Inc.<br>(Suffolk, Nassau, New York,<br>Bronx, Queens, Richmond and<br>Kings Counties)  | Contingent Approval |
| 1969-L | J & A Hurley, Inc. d/b/a Home<br>Instead<br>Senior Care<br>(Schenectady, Schoharie, Albany<br>and Montgomery Counties)                                 | Contingent Approval |
| 1706-L | K & D Home Care, Inc.<br>(New York, Bronx, Kings,<br>Richmond, Queens and Nassau<br>Counties)  | Contingent Approval |
| 1923-L | Marks Homecare Agency of NY,<br>Inc.<br>(New York, Bronx, Kings,<br>Richmond, Queens, and<br>Westchester Counties)                                     | Contingent Approval |
| 1889-L | PCDI Healthcare and Consultants<br>of Texas, LLC<br>(New York, Kings, Bronx,<br>Queens, Richmond and Nassau<br>Counties)                               | Contingent Approval |
| 1965-L | Regina G. Yankey d/b/a Orange<br>Homecare and Staffing Agency<br>(Orange, Sullivan, Rockland,<br>Dutchess, Westchester, Bronx, and<br>Putnam Counties) | Contingent Approval |



|        |   |                     |
|--------|---|---------------------|
| 1800-L | Safe Haven Home Care, Inc.<br>(Bronx, Richmond, Kings, New York and Queens Counties)  | Contingent Approval |
| 1937-L | Queens Homecare Agency, Inc.<br>(Bronx, Kings, New York, Queens, and Richmond Counties)                                     | Contingent Approval |
| 1939-L | Funzalo & Canteet, Inc. d/b/a<br>Right at Home North Shore LI<br>(Nassau, Suffolk, and Queens Counties)                     | Contingent Approval |
| 1789-L | Senior Comfort Solutions, LLC<br>d/b/a Comfort Keepers<br>(Nassau and Suffolk Counties)                                     | Contingent Approval |
| 1973-L | T.A. Daniels Holdings, Inc.<br>d/b/a Senior Helpers<br>(Westchester County)   | Contingent Approval |
| 1975-L | Tayler Ashley Group, Inc. d/b/a<br>Senior Helpers<br>(Dutchess, Westchester, Orange, Putnam, Sullivan, and Ulster Counties) | Contingent Approval |
| 1961-L | TriMed Home Care Services, Inc.<br>(Nassau and Suffolk Counties)  | Contingent Approval |
| 1922-L | Your Choice Homecare Agency, Inc.<br>(New York, Westchester, Kings, Queens, Bronx and Richmond Counties)                    | Contingent Approval |
| 2113-L | Steuben County Public Health & Nursing Services<br>(Steuben County)   | Contingent Approval |
| 1976-L | Parent Care, LLC<br>(Kings, Richmond, Queens, New York, Bronx, and Nassau Counties)   | Contingent Approval |
| 2099-L | SeniorBridge Family Companies (NY), Inc.<br>(See exhibit for counties listed)   | Contingent Approval |

Mr. Kraut moved Category 1 as a batch and motioned for approval for all applications. The motion to approve Category 1 was seconded by Dr. Gutiérrez. The motioned carried. Please see pages 79 through 83 to review the questions and comments from Council members.

**CON Applications**

**Acute Care – Construction**

**Exhibit #4**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>Council Action</u></b> |
|----|----------------------|--|------------------------------|
| 1. | 111444 C             | Lincoln Medical and Mental Health Center<br>(Bronx County)<br>Dr. Bhat – Recusing<br>Dr. Boufford – Recusing<br>Dr. Boutin-Foster - Recusing<br>Dr. Martin - Interest<br>Dr. Sullivan – Recusing | Contingent Approval          |

Mr. Kraut returned to application 111444 C. Dr. Bhat, Dr. Boufford, Dr. Boutin-Foster, and Dr. Sullivan declared a conflict and exited the meeting room. Dr. Martin’s interest was noted for the record. Mr. Kraut described the application and motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with the noted recusals. Dr. Bhat, Dr. Boufford, Dr. Boutin-Foster and Dr. Sullivan returned to the meeting room. Please see pages 83 and 84 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**

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

**Exhibit #12**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                                     | <b><u>Council Action</u></b> |
|----|----------------------|--|------------------------------|
| 1. | 112042 B             | The Chautauqua Center<br>(Chautauqua County)<br>Mr. Booth - Interest | Contingent Approval          |

**Hospice – Establish/Construct**

**Exhibit #13**

|  | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b> | <b><u>Council Action</u></b> |
|--|----------------------|----------------------------------|------------------------------|
|--|----------------------|----------------------------------|------------------------------|

1. 121049 E

Lewis County Hospice  
(Lewis County)  
Mr. Booth - Interest

Approval

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

| <u>Number</u> | <u>Applicant/Facility</u>  | <u>Council Action</u> |
|---------------|--|-----------------------|
| 1. 112156 E   | Parkview Operating Co., d/b/a Westchester Center for Rehabilitation & Nursing (Westchester County)<br>Mr. Fensterman - Recusal | Contingent Approval   |

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

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>Council Action</u> |
|---------------|---|-----------------------|
| 1. 121018 E   | Lewis County General Hospital d/b/a Lewis County General Hospital Certified Home Healthcare Agency (Lewis County)<br>Mr. Booth - Interest | Approval              |
| 2. 121219 E   | L. Woerner, Inc. d/b/a HCR (Clinton County)<br>Mr. Booth – Interest<br>Ms. Hines - Interest   | Approval              |

**HOME HEALTH AGENCY LICENSURES****Exhibit #18**

| <u>Number</u> | <u>Applicant/Facility</u>   | <u>Council Action</u> |
|---------------|---|-----------------------|
| 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)<br>Mr. Booth – Interest<br>Ms. Hines – Interest | Contingent Approval   |
| 1856-L        | Life’s Changing Seasons Eldercare, LLC (Onondaga, Oswego, Seneca, Cayuga, Cortland, Oneida, Madison and Tompkins Counties)<br>Mr. Booth – Interest  | Contingent Approval   |

|        |   |                     |
|--------|---|---------------------|
| 1798-L | NurseCore Management Services – New York, LLC<br>(Livingston, Monroe, Ontario and Wayne Counties)<br>Mr. Booth – Interest<br>Ms. Hines – Interest | Contingent Approval |
| 1977-L | Sephardic Home Care Services, Inc.<br>(New York, Nassau, Kings, Queens, Bronx, and Richmond Counties)<br>Mr. Fassler – Interest                   | Contingent Approval |
| 2033-L | Heritage Ransomville Management, LLC d/b/a Heritage Manor of Ransomville Home Care<br>(Niagara County)<br>Mr. Booth – Interest                    | Contingent Approval |

Mr. Kraut described all applications in Category 2 with the exception of application 2112 and briefly described the applications and noted for the record the member’s interest. He also noted for the record that Mr. Fensterman was not present at the meeting and noted his conflict for application 112156. Mr. Kraut motioned for approval for applications contained in Category 2 with the exception of 2112L. The motion was seconded by Dr. Gutiérrez. Please see pages 84 through 87 of the attached transcript.

|       |  |                     |
|-------|--|---------------------|
| 2112L | CL Healthcare, Inc.<br>(Bronx County)<br>Mr. Fassler - Recusal | Contingent Approval |
|-------|--|---------------------|

Mr. Fassler exited the meeting declaring a conflict on application 2112L. Mr. Kraut described the application, motioned for approval which was seconded by Dr. Gutiérrez. The motion to approve carried with Mr. Fassler’s recusal. Mr. Fassler returned to the meeting room. See pages 87 and 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

**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**

| <u>Number</u> | <u>Applicant/Facility</u>                              | <u>Council Action</u> |
|---------------|--|-----------------------|
| 1. 092158 B   | DV Corp. d/b/a Riverside Dialysis (Westchester County) | Disapproved           |

Mr. Kraut introduced application 092158 and motioned for disapproval. Dr. Gutiérrez seconded the motion to disapprove. The motion to disapprove carried. Please see pages 88 and 89 of the attached transcript.

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

Mr. Kraut noted for the record that application 082143 was deferred at the request of the Committee. Please see page 89 of the attached transcript.

**ADJOURNMENT:**

Dr. Streck hearing not further business of the Council adjourned the meeting.

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STATE OF NEW YORK  
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

June 7, 2012

10:00 a.m.

90 Church Street  
New York, New York

BEFORE: DR. WILLIAM STRECK, Chairman

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MEMBERSHIP:

HOWARD S. BERLINER, SC.D.  
JODUMUTT GANESH BHAT, M.D.  
CHRISTOPHER C. BOOTH  
JO IVEY BOUFFORD, M.D.  
MICHAEL FASSLER  
HOWARD FENSTERMAN  
CARLA BOUTIN-FOSTER, M.D.  
JEFFREY A. KRAUT  
ELLEN GRANT, PH.D.  
ANGEL ALFONSO GUTIERREZ, M.D.  
VICTORIA G. HINES  
ROBERT W. HURLBUT  
ARTHUR A. LEVIN, MPH  
GLENN MARTIN, M.D.  
JOHN M. PALMER, PH.D.  
ELLEN L. RAUTENBERG, M.H.S.  
SUSAN REGAN c/o COLLEEN FROST  
PETER G. ROBINSON  
JOHN RUGGE, M.D., MPP  
THEODORE STRANGE, M.D.  
ANN MARIE THERESA SULLIVAN, M.D.  
ANDERSON TORRES, PH.D., LCSW-R



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PATSY YANG, DR.P.H.  
DR. NIRAV SHAH, COMMISSIONER OF HEALTH

1 PHHPC - 6/7/2012

2 MR. KRAUT: I'd like to call to order  
3 the meeting of the Public Health and Health  
4 Planning Council and welcome our participants and  
5 observers. My name is Jeff Kraut. I'm the  
6 Vice-Chairman of the council.

7 I'd like to remind everyone we're  
8 webcasting today's proceedings. And I'd like to  
9 remind the council members and staff and the  
10 audience, this meeting is subject to the Open  
11 Meeting Laws broadcast over the internet. These  
12 webcast are accessible through the Department of  
13 Health's website at NY Health dot gov. The on  
14 demand webcast will be available no later than  
15 seven days after the meeting for a minimum of 30  
16 days thereafter, and copies are retained in the  
17 Department for up to four months.

18 There are some suggestions or ground  
19 rules that will make this more successful. Because  
20 it's synchronized captioning, it's important that  
21 people do not talk over each other. We can't do  
22 the captioning when two people are speaking at the  
23 same time. The first time you speak please state  
24 your name and briefly identify yourself as a member  
25 of the council or a member of the DOH staff. This

1 PHHPC - 6/7/2012

2 will be very helpful to the broadcasting company  
3 recording the meeting and our stenographer who's  
4 taking notes.

5 Please note that the microphones are  
6 hot. That means they pick up every sound. And try  
7 to avoid the rustling of paper next to the  
8 microphone. Be sensitive about personal  
9 conversations and side conversations, that also  
10 gets picked up. When you think you're whispering  
11 you're not. And I need to remind you we have  
12 enough politicians who have suffered because of  
13 that.

14 There is a reminder for our audience.  
15 There is a form outside that's called the Record of  
16 Appearance Form. This needs to be filled out  
17 before you enter the meeting room which records  
18 your attendance at today's meeting. If you haven't  
19 done so, please do so on your way out or when there  
20 is a break. It's required by the Joint Commission  
21 on Public Ethics in accordance with Executive Law  
22 Section 166. The Department of Health's website,  
23 again, NY health dot gov, under Certificate of Need  
24 you can also fill this out prior to attending  
25 council meetings. And we appreciate your

1 PHHPC - 6/7/2012

2 cooperation as we fulfill our duties as prescribed  
3 by law.

4 Today we'll have a brief overview of  
5 what will be accomplished today. We'll begin with  
6 a health report from the Department of Health from  
7 Dr. Shah to talk about the Department of Health  
8 activities. Rick Cook will be joining us via video  
9 conference from Albany to discuss the OHSM  
10 activities. Mr. Smith will report on activities of  
11 the Office of Health Information Technology and  
12 Transformation. And Dr. Birkhead will give a  
13 report on the activities of the Office of Public  
14 Health. And under the category of Public Health  
15 Services, Dr. Boufford will give an update on the  
16 initiatives of the committee on public health  
17 followed by Dr. Ruge who will be talking about the  
18 activities of the Health Planning Committee. Then  
19 Dr. Gutierrez will discuss and present regulations  
20 for emergency adoption and discussion. And then I  
21 will provide under Project Review the  
22 recommendations of the Establishment of Project  
23 Review Committee.

24 Let me just discuss an issue about  
25 conflicts for the Public Health and Health Planning

1 PHHPC - 6/7/2012

2 council members. Most of our guess who regularly  
3 attend the meetings are familiar with the  
4 reorganization of the agenda by topics or  
5 categories which captures the roles and  
6 responsibilities of the council. The  
7 reorganization includes now the batching of  
8 Certificate of Need applications for approval and  
9 discussion by the council. So, I hope you all had  
10 an opportunity to review the batched applications  
11 and decide whether or not you want a project moved  
12 to a different category. And I'll pause before I  
13 give that report to give you an opportunity to  
14 request a change to the batched applications.

15 Our next agenda item is the adoption of  
16 the minutes. May I have a motion for adoption of  
17 the April 5, 2012 Public Health and Health Planning  
18 Council minutes.

19 DR. GUTIERREZ: So moved.

20 DR. RUGGE: Second.

21 MR. KRAUT: I have a motion by Dr.  
22 Gutierrez, I have a second Dr. Rugge.

23 Any discussion?

24 All those in favor "Aye."

25 (A chorus of Ayes.)

1 PHHPC - 6/7/2012

2 MR. KRAUT: Opposed?

3 The motion carries.

4 It's now my pleasure to hear from  
5 Commissioner Shah who will update the council about  
6 the Department's activities since the last meeting.

7 COMMISSIONER SHAH: Good morning. I'll  
8 start my report with some major announcements made  
9 this week.

10 On Tuesday Governor Cuomo announced an  
11 agreement with the Attorney General and the state  
12 legislature on a comprehensive reform package to  
13 reduce prescription drug abuse. The illicit abuse  
14 of prescription drugs has been a growing problem  
15 causing nearly 15,000 fatalities a year due to  
16 overdose. We've seen a dramatic rise in the use of  
17 prescription painkillers for nonmedical reasons,  
18 and sales of opiate painkillers has quadrupled over  
19 the last decade. Clearly action was necessary.  
20 This new law will address and intervene and  
21 tracking of prescription in New York including  
22 implementation of a real time prescription  
23 monitoring Registry to provide timely and enhanced  
24 information to practitioners and pharmacists.

25 The Department's PMPR, the Prescription

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2 Monitoring Program Registry, will be updated and  
3 modernized to significantly reduce opportunity for  
4 doctor shopping by individuals seeking to obtain  
5 prescriptions from multiple providers.

6 Practitioners and pharmacists will be able to  
7 securely access the Registry to view a patient  
8 controlled substance history. They'll be required  
9 to consult the Registry before prescribing or  
10 dispensing drugs that are most likely to be abused  
11 or diverted, but it's done logically. It's done in  
12 a way that they can review with staff, the entire  
13 panel in advance of a patient's visit, not  
14 necessarily in real time, a few hours in advance is  
15 fine.

16 The legislation will also require  
17 electronic prescribing or e-prescribing for all  
18 controlled substances with limited exceptions in a  
19 few years. New York will be one of the first  
20 states to transition to e-prescribing. This is an  
21 important tool to eliminate diversion that occurs  
22 due to forgery, alteration or theft of prescription  
23 paper.

24 In addition to providing additional  
25 security for prescriptions, this new provision will

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2 help to minimize medication errors which cause  
3 serious health problems for patients and adds  
4 burdensome costs to our health care system.

5 Another important measure in this  
6 legislation would remove hydrocodone from Schedule  
7 3 and replace it on Schedule 2. This will  
8 eliminate automatic refills and eliminate amounts  
9 prescribed or dispensed to 30 day supplier. To  
10 give you a sense of why this is important. In 2009  
11 there were 86,000 emergency department visits due  
12 to nonmedical use of hydrocodone.

13 This legislation will also expand  
14 functions under the Department's Prescription Pain  
15 Medication Awareness Program to enhance continued  
16 education for practitioners and pharmacists and  
17 other parts of the I Stop Law.

18 Finally, the Department will be directed  
19 to work with local police departments to establish  
20 safe and secure disposal sites for unused  
21 controlled substances. As you know, a large part  
22 of the problem is the cabinet problem, left over  
23 meds left in cabinets that are diverted. Under the  
24 present law the safest disposal of controlled  
25 substances is limited only to special take back



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2 events offered periodically through the year,  
3 that's why people have left over meds in their  
4 cabinets.

5 I want to commend the collaborative  
6 effort to create this important new legislation  
7 which will make a big difference in the  
8 prescription drug abuse problem in New York state.

9 Also this week the Governor announced  
10 that the state will pursue a ground breaking  
11 Medicaid 1115 waiver that would provide \$10 billion  
12 over five years to fully implement Medicaid  
13 redesign initiatives and prepare for national  
14 health care reform. The waiver would allow New  
15 York to reinvest a portion of its \$17.1 billion in  
16 federal savings that will be realized over the next  
17 five years as a result of the state's  
18 implementation of the Medicaid redesign team  
19 recommendation. As the Governor noted when  
20 announcing the waiver, New York has taken the first  
21 step to transform our health care system.

22 The MRT action plan not only does reduce  
23 Medicaid cost, but has also led to the creation of  
24 programs like Health Homes and patient centered  
25 medical homes that will ensure high quality care

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2 and great access for all of our high need  
3 individuals.

4 The reinvestment of funds will also help  
5 to modernize and strengthen our state's fragile  
6 health care safety net, and provide expanded  
7 primary care access in light of the expected demand  
8 for these services. As part of the application for  
9 the waiver, the state will be launching extensive  
10 public engagement efforts including public forums,  
11 topic specific webinars, focus groups and more. We  
12 witnessed the success of such public efforts during  
13 MRT last year and we're going to try to repeat that  
14 success and build on it.

15 New York Health Insurance Exchange is  
16 yet another project the Department is working on  
17 with many other agencies. Approximately 16 percent  
18 of New Yorkers under age 65 are currently  
19 uninsured. Most of them are working people with  
20 families who simply cannot afford to buy coverage  
21 on their own. For example, it currently cost  
22 approximately \$1,300 per month for individual  
23 coverage, which many people cannot afford. In  
24 addition, over the last decade more than 800,000  
25 New Yorkers have lost their employee sponsor

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2 coverage due to escalating cost of providing that  
3 coverage. On April 12th of this year, Governor  
4 Cuomo issued Executive Order 42 to establish the  
5 New York health benefit exchange in the Department  
6 of Health.

7 The Department is working with other  
8 state agencies including the Department of  
9 Financial Services to make sure we're ready to  
10 implement the exchange by January 1st, 2014. The  
11 exchange will result in lower premiums for  
12 individuals and small businesses. New Yorkers who  
13 purchase coverage through the exchange will be able  
14 to access \$2.6 million in federal premium tax  
15 credits and cost sharing subsidies that will help  
16 them afford coverage. That's 2.5 billion a year  
17 from the feds. Overall, the Exchange will provide  
18 1 million additional uninsured New Yorkers with  
19 affordable health insurance coverage.

20 Let me briefly update you on the actions  
21 we're taking to achieve these goals. An  
22 inter-agency task force is currently planning for  
23 the implementation of the Exchange using \$88  
24 million in federal grants already received for this  
25 purpose. Regional advisor committees are being

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2 established to provide advice on planning and  
3 implementing the Exchange. A series of policy  
4 studies are underway to examine which health plans  
5 can participate in the exchange, what benefits will  
6 be offered to enrollees, and whether the state will  
7 operate an optional basic health plan for  
8 individuals up to 200 percent of the federal  
9 poverty level.

10 In addition, the Department is building  
11 a new IT system to administer the exchange. Once  
12 the exchange is established, an individual seeking  
13 insurance coverage in New York will for the first  
14 time be able to access a single point of entry to  
15 apply for coverage and shop for a health plan  
16 regardless of whether they're eligible for Medicaid  
17 subsidized or unsubsidized coverage.

18 I want to give you some sense of the  
19 scope of the confusion out there right now. If  
20 you're a small business looking for a product,  
21 there are over 15,000 different products available  
22 in New York state. And we're never going to get to  
23 12, but there's some number between 12 and 15,000  
24 that is much more accessible.

25 Later this year New York efforts will be

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2 reviewed by the U.S. Department of Health and Human  
3 Services, and will have an opportunity to  
4 demonstrate that we are ready to operate a state  
5 base exchange. I'm sure we're going to make it,  
6 and we'll have 1 million more people insured and  
7 accessing comprehensive health insurance coverage.

8 We also have a lot going on on the  
9 Health Information Technology front. In late April  
10 a new health IT initiative was announced to make  
11 New York state a hub for high tech jobs. The New  
12 York Digital Health Accelerator is a joint venture  
13 of the New York City Investment Fund, the New York  
14 E Health Collaborative, and the Department of  
15 Health to support companies that are developing  
16 leading edge technology products for care  
17 coordination, patient engagement, analytics and  
18 message alerts for health care providers. The  
19 focus will be on developing products to support MRT  
20 efforts, particularly the Health Home Programs.  
21 What we're doing is we're building the apps to help  
22 us achieve the promise of Health Homes and Health  
23 Care Reform.

24 Twelve companies will be selected to  
25 receive awards of up to \$300,000 each along with

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2 mentoring from senior level executives and leading  
3 hospitals and health care providers from across the  
4 state. The awards are targeted to early stage and  
5 growth stage companies and they'll help attract  
6 additional investments and create jobs. The \$4.2  
7 million program is projected to create 1,500 jobs  
8 over the next five years and generate between 150  
9 to \$200 million in additional investments which  
10 will further innovation in health IT.

11 Applications were due June 1st. So I'm  
12 sorry, you're out of luck. But we received between  
13 250 to 300 applications. Entire governments were,  
14 I think it was Finland, sent five companies over to  
15 apply. And because of the excitement around this  
16 program, we know we can't limit it to 12. We need  
17 to figure how out how to expand this beyond for the  
18 next round.

19 Health IT is a valuable tool and will  
20 really help us achieve the goals that we need in  
21 the short-term. This digital health accelerator,  
22 and I encourage you to visit the website and follow  
23 its progress, will advance our state's national  
24 leadership in IT and also create jobs and economic  
25 development.

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2 I'll give a brief update on public  
3 health. The Department continues to work with  
4 local health departments to prevent disease and  
5 quickly respond to any health threats that arise.  
6 For example, recently the Department has been  
7 working closely with counties in central New York  
8 to raise public awareness about eastern equine  
9 encephalitis, EEE or triple E, is a rare but  
10 potentially fatal mosquito borne disease primarily  
11 found in four counties in the central New York  
12 region. There have been only five reported cases  
13 of triple E in New York dating back to 1971, but  
14 cases in each of the last three years, all of them  
15 resulting in fatalities, including a four-year-old  
16 girl who died from triple E last summer.

17 The Department and local public health  
18 departments are collaborating to raise awareness  
19 about potential health risks, and inform New  
20 Yorkers about personal protective measures they  
21 should take to reduce these risks. Mosquito  
22 surveillance began on May 28th to determine where  
23 triple E is present, and we'll share these findings  
24 with local counties to determine the best  
25 strategies to control mosquitos including the

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2 option of aerial spraying. The collaborative has  
3 been very positive and has generated public  
4 attention about triple E and the importance of  
5 taking protective measures.

6 I want to conclude today's report by  
7 acknowledging the service of some very brave New  
8 Yorkers. There are nearly 60,000 EMS providers in  
9 New York who provide critical life saving services,  
10 and many times their own safety is at risk. Each  
11 April a special ceremony is held to honor members  
12 of New York Emergency Medical Services or EMS who  
13 have died in the line of duty. We pay tribute to  
14 these heroes by adding their names to a tree of life  
15 Memorial at the Empire State Plaza in Albany. This  
16 year the ceremony was held on April 23rd and the  
17 Lieutenant Governor was on hand to honor EMS  
18 members and those we have lost. There are a total  
19 of 42 names on that Memorial. The good news is  
20 there were no new names to add in 2011. Let's hope  
21 that 2012 is a safe year for all EMS members as  
22 well.

23 This concludes my report. Thank you.

24 DR. STRECK: Thank you, Commissioner.

25 Are there questions for the



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2 Commissioner?

3 Dr. Berliner.

4 DR. BERLINER: Dr. Shah, not to put you  
5 on the spot, but do you have a position on the  
6 proposed ban on sugar drinks over 16 ounces that  
7 the Mayor has proposed?

8 COMMISSIONER SHAH: You know, pediatric  
9 obesity and obesity in general is probably one of  
10 the fastest emerging threats that we have for our  
11 state and our nation. To the extent that this  
12 raises the debate and starts some idea on how to  
13 approach it, I think is a good thing. I think  
14 we'll take a wait and see approach to see what  
15 happens before we make up our mind on whether this  
16 is a good thing or not.

17 DR. BERLINER: Thank you.

18 DR. STRECK: Other questions for the  
19 Commissioner?

20 Dr. Boufford.

21 DR. BOUFFORD: Another speculative  
22 question. We're hearing increasingly that  
23 regardless of what happens with the Supreme Court  
24 decision, many states are already moving forward in  
25 the way that you described New York in terms of

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2 implementing many of the provisions of the  
3 Accountable Care Act, you know, locally. Can you  
4 just talk a little bit about how that factors into  
5 your thinking in terms of the waiver and sort of  
6 the timing of it and what would happen if certain  
7 of the mandates are...

8 COMMISSIONER SHAH: Sure. So, the  
9 question related to what is going to happen with  
10 the Supreme Court and what does that mean for New  
11 York. And, frankly, the waiver discussions are  
12 completely separate discussions. We're not even  
13 thinking of the waiver in terms of -- we're going  
14 for the waiver and we want to get approval before  
15 the election cycle. So, before November we would  
16 love to get approval. So it's a very abbreviated  
17 timeframe to have that public comment to revise the  
18 document, and then most importantly to all go in  
19 together as a unified voice from New York saying we  
20 need this waiver for New York citizens. We've  
21 already done amazing things with MRT and we are  
22 going to continue to do them and we're going to  
23 make sure we're ready for whatever happens. So,  
24 it's a separate discussion.

25 In terms of what happens with our

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2 exchange and what happens with the Supreme Court  
3 ruling, you know, New York already provides a high  
4 level of coverage in terms of what's the additional  
5 coverage we're going to provide. The childless  
6 adults are currently covered up to 138 percent of  
7 poverty going up to 200 percent. That's a small  
8 chunk of people. It's not like many other states  
9 that are going to see huge expansion of their  
10 Medicaid program.

11 That being said, we've also received \$88  
12 million toward building an exchange in the All  
13 Payer Database. We're moving forward and spending  
14 those funds as fast as we can. The Governor's  
15 executive order has said we are building the  
16 exchange in New York state, and we're confident  
17 that, you know, what's the most likely scenario  
18 speculating if they throw down the individual  
19 mandate or something like that, that will affect  
20 the numbers in terms of how many people actually  
21 enroll, how much the risk pools actually go down in  
22 terms of risk, but in the grand scheme of things  
23 it's just a minor change to -- the ruling is not a  
24 complete strike down of the law. Our hope is that  
25 we will continue pretty much unchanged and see our

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2 vision for New York. Obviously if the entire law  
3 is struck down, if they go and say you know what,  
4 we're going to take back the \$88 million we've  
5 given you, that's a different story. But I'm an  
6 optimistic, as you know, and I'm hoping that we  
7 will move full speed ahead with our exchange and  
8 all the other reforms that we've done.

9 In some sense you talk to people,  
10 because of what's happened despite the ACA with  
11 clinical integration, with the integration of  
12 public health into a clinical care, understanding  
13 how behavioral health factors in into the continuum  
14 of care of physical health, all of these  
15 initiatives are happening and systems of care are  
16 developing. So, to some extent, you know, we're  
17 not going to see many changes.

18 DR. BOUFFORD: Thank you.

19 DR. STRECK: Dr. Boutin-Foster.

20 DR. BOUTIN-FOSTER: Thank you so much  
21 for the update on controlled substance use. At the  
22 last meeting you mentioned -- on synthetic  
23 marijuana. And since that time I've heard of  
24 something else on the news in terms of new drugs  
25 that are causing, you know, such visual reaction

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2 that, you know, you're starting to hear about  
3 people biting off ears and, you know... I mean has  
4 there -- are these things, you know, you talk about  
5 one thing and then next week something else comes  
6 up. Is there a mechanism in place for the  
7 Department to, you know, create a database of these  
8 new symptoms? Sometimes people hear about it  
9 because of the symptoms that they're causing, so  
10 that physicians can hear about these things and be  
11 more aware and be able to identify and respond.

12 COMMISSIONER SHAH: You know, that's a  
13 great question. So, we've been very proactive in  
14 leading in terms of -- I think that the ear biting  
15 one related to bath salt which we banned a year  
16 ago, and this year was the synthetic marijuana that  
17 we banned. We do what we can to the extent of  
18 public health law in terms of banning these  
19 substances. And then it's up to our legislative  
20 representatives to pass the laws to make certain  
21 penalties behind these behaviors and, you know,  
22 actual fines related to the sale and possession and  
23 distribution. And I think they've done a very good  
24 job at being responsive. So we have been able to  
25 work across the continuum of government to in near

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2 real time address these in New York state.

3 I don't know that the development or  
4 Registry or anything like that happened is  
5 necessary. What we do is we get reports from  
6 poison centers, we have other reporting mechanisms  
7 through emergency rooms to provide that kind of  
8 active surveillance in real time and respond to it.  
9 And I think we've done a pretty good job.

10 DR. STRECK: Other questions for the  
11 Commissioner?

12 Thank you, Commissioner.

13 By way of introduction, late  
14 introduction, I'm Dr. William Streck. I'm the  
15 Chair. I was late arriving today because of a  
16 signaling malfunction on Amtrak. A justifiable  
17 reason to slow down, in my opinion. But there are  
18 two reasons not to be late. One is it's  
19 discourteous, and for that I apologize. And the  
20 other is that it obviously makes it clear the  
21 nonessential nature of my presence since the  
22 meeting was going on, so. On both those grounds  
23 it's a pleasure to be here and we will now continue  
24 with the meeting.

25 Thank you again, Commissioner.

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2 And Mr. Cook. Rick from Albany will  
3 presenting the OHSM report.

4 MR. COOK: The only update I want to  
5 provide this morning concerns where we were with  
6 the RFA related to the CHHA applications. We were  
7 hoping to aim for this agenda in order to begin  
8 deliberation on those applications, but we just are  
9 not ready. So, what we are going to propose is  
10 that we will split up the review of those  
11 applications over the next two meetings. So,  
12 that's the July, August agenda we will look at all  
13 down state applications. Those down state  
14 applications there were approximately I think 90  
15 that have multiple expansions into the borough of  
16 New York city as well as Long Island and  
17 Westchester County, that's how we're defining down  
18 state. And this will be a very extended meeting  
19 that the council has recommended before. We will  
20 provide reviews and information on all the  
21 applications, not just on the ones that we are  
22 recommending approval for. At the September,  
23 October meeting we will then review the remaining  
24 down state applications which are approximately I  
25 think 46 or something like that. So, the

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2 applications we're waving through now there are  
3 many, many good ones and there are those that, you  
4 know, will be a challenge for us in our review.  
5 And we will try and produce summaries so that each  
6 member would have a sense of our rationale of why  
7 we're making the recommendation we're doing. And I  
8 think I'll leave it at that and take questions,  
9 because I think that has really been the challenge  
10 that we have been going through over the last six  
11 weeks, begin to wave through these applications and  
12 to find the right way to present and evaluate these  
13 applications.

14 DR. STRECK: Thank you, Rick.

15 Questions for Mr. Cook?

16 Mr. Kraut.

17 MR. KRAUT: Rick, is there -- so, just  
18 for us to plan for the next meeting. Obviously  
19 it's, you know, we should plan -- it's going to be  
20 a longer project review meeting than maybe the  
21 previous one. The opportunity for public comment,  
22 it's just helpful as I think those reviews come out  
23 just to remind both applicants and individuals who  
24 are both supporting or opposing applications, that  
25 we not be given any information because of the



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1  
2 magnitude of it, you know, 24 hours before the  
3 meeting. I think when the reviews get published it  
4 might be helpful to reaffirm the council's policy  
5 with respect to communication. That could be just  
6 helpful just to manage what is inevitably going to  
7 be some response.

8 MR. COOK: I agree. And I think, you  
9 know, we're working through right now -- I mean,  
10 the most important things for us is to assess these  
11 applications. And, you know, the thing that's  
12 interesting is whenever you do an RFA, whatever you  
13 think you're going to get, you get something that  
14 is a little bit different and you learn from the  
15 best applications, and that's what we're finding  
16 right now. And so, I think as we get through I  
17 would say the next couple of weeks we will put  
18 together a format of how we want to share this with  
19 the council. We will let the community know, you  
20 know, the rules and that we want them to stay with  
21 it for the application date, for the project review  
22 date. And I think it's going to be, clearly going  
23 to be a full day because you're looking at, you  
24 know, it's not just 90 applicants. I mean those 90  
25 applicants have multiple applications in each of

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2 the boroughs and in Long Island. So, there are an  
3 -- as you remember, the need methodology says that  
4 we are accepting needs by county, and we are  
5 looking at both the need methodology that we have  
6 within the regs, but in addition it's just as  
7 importantly looking at how these applications will  
8 contribute to the Medicaid redesign initiative  
9 related to long-term care. And so, I think, you  
10 know, our challenge here is to produce for you the  
11 highest information that's helpful to make a  
12 judgement, and at the same point in the time make  
13 sure that the community always has their input and  
14 we will do -- how we will do that.

15 DR. STRECK: Mr. Kraut just pointed out  
16 that the next meeting is at the Century House in  
17 Latham, that has more limited capacity, so it may  
18 take some planning. There is, however, the  
19 capacity for overnight housing to complete the  
20 project review stuff, so there will be some  
21 flexibility there.

22 MR. KRAUT: And there's a big bar next  
23 door.

24 DR. STRECK: Other comments or questions  
25 for Mr. Cook?

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2 Thank you.

3 Now, Mr. Smith, you're going to handle  
4 the HIT presentation.

5 MR. SMITH: I am. Thank you, Dr.  
6 Streck. As everybody knows Commissioner Shah is a  
7 big proponent of Health Information Technology, so  
8 our office has been particularly busy since his  
9 arrival.

10 There are two items that I wanted to  
11 update the council about quickly today. The first  
12 is Meaningful Use. As people are aware in 2010  
13 HHFS nationally allocated 34 billion in funding to  
14 help promote these optional electronic health  
15 records by both Medicaid and Medicare providers.

16 The way the funding is broken down is  
17 for eligible professionals as well as for eligible  
18 hospitals. From a Medicaid perspective the  
19 allocation is \$20 billion, and eligible  
20 professionals can qualify for up to \$44,000 over  
21 the course of the program. From the Medicaid  
22 perspective the allocation is \$14 billion, and  
23 under that program eligible professionals can  
24 receive up to \$66,000 over the course of the  
25 program.

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2 Over the past several months New York  
3 state is one of seven states across the nation that  
4 has joined the multi-state challenge to maximize  
5 the number of eligible professionals and eligible  
6 hospitals who meet the requirements of Meaningful  
7 Use. Our original goal with HHF was to have 6,000  
8 Medicaid and Medicare professionals receive  
9 incentive payments during this year. Medical has  
10 been increased to 9,000 and we're confident that  
11 we're going to be able to hit it. The approaches  
12 that we're taking to hit that is using the two New  
13 York state regional extension centers or recs. So  
14 the nice rec and the New York city rec has split up  
15 the state and they're working directly with  
16 professionals to help them meet the requirements  
17 for Meaningful Use to receive the payment.

18 The good news that I have to report  
19 about the Meaningful Use program is, to date in New  
20 York state over \$210 million has been paid to  
21 hospitals and eligible professionals. And that  
22 breaks down almost 50, 50 between Medicare and  
23 Medicaid. We're real excited about the accelerator  
24 program and we look forward to getting those \$9,000  
25 to professionals to Meaningful Use.

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2 The second area that I wanted to give a  
3 quick update on, as the Commissioner already eluded  
4 to, is the All Payer Data Warehouse. People may be  
5 aware that in February our office received funding  
6 through the state Level 1 health insurance exchange  
7 establishment grant to begin the APD activity. So,  
8 there's a number of initiatives underway. The  
9 first is establishing the governance model that  
10 will include federal -- and two external advisory  
11 boards. We're currently conducting nominations for  
12 both data users advisory group and the data  
13 contributors advisory group. So if anyone is  
14 interested please let us know, we would be happy to  
15 get you incorporated. There are two workgroups  
16 that have been established and has been physically  
17 beginning work. The first is the data-intake and  
18 collections subgroup, which is meeting to identify  
19 what the commercial playing submission will look  
20 like as part of Phase 1 of the program. The second  
21 group is focusing on the requirement for the  
22 program for both a master provider index as well as  
23 a master patient index.

24 Another major initiative that's underway  
25 in relationship to the APD is the drafting of

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2 regulation. And we're anticipating having the  
3 first internal draft available of those regulations  
4 in early July and seeing it go through the process.  
5 We're also finishing up and hope to release in the  
6 mid June timeframe an RFI for the overall APD  
7 projet, which you will include governance and  
8 project approaches, services, operations, data  
9 governance, analytics and sustainability for the  
10 APD.

11 And, finally, the things that we're most  
12 excited about on an immediate basis is we're in the  
13 process of a contract to establish a proof of  
14 concept for the APD. And basically what the proof  
15 of concept will do is allow us to aggregate  
16 existing public and private data sets, specifically  
17 data from SPARCS, Medicaid and NYQA. We're looking  
18 forward to this group of concept. That will be our  
19 first opportunity to really try and aggregate a  
20 heterogenous public and private data set and to be  
21 able to perform analytics on how to gain some  
22 valuable lessons as we move forward with the full  
23 process. Thank you.

24 DR. STRECK: Questions or comments?

25 I would just comment on the All Payer

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2 data set. I think that is quite one of the more  
3 important things that's happened in the state. On  
4 a personal note, I remember ten years ago at a  
5 SHRPC, I was chairing a SHRPC workgroup on  
6 availability of cancer services. And we held a  
7 meeting at the Seventh Street Penn Station office  
8 and had a couple of insurance executives there.  
9 One, a colleague whom I remember quite well and who  
10 has done quite well who was the head of one of the  
11 large firms, and we said we need your information,  
12 we can't really analyze needs and cancer based on  
13 the Medicaid population alone. He was quite  
14 explicit. He said it's proprietary, you cannot  
15 have it.

16 MR. KRAUT: And you will never have it.

17 DR. STRECK: And you will never have it.

18 Never was ten years, but it's -- back then it was a  
19 problem. And I think we have a great opportunity  
20 here. So, I just want to highlight Steve's remarks  
21 and not be overly generous and praise the  
22 Commissioner, but it was one of the first things  
23 that he -- this had to go through the legislature  
24 to get in place.

25 Other comments, questions?

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2 Thank you, Steve.

3 Gus. Dr. Birkhead.

4 DR. BIRKHEAD: Thank you, Dr. Streck. I  
5 want to provide the council today with an update on  
6 the Department's efforts around public health  
7 accreditation. I think we've been through this and  
8 discussed it at previous meetings, but there is a  
9 new national public health accreditation board for  
10 state and local health departments, and the  
11 Department has embarked on the path of moving  
12 toward accreditation. Since I last spoke to you  
13 about this, the Department has put forward a letter  
14 of intent to the national board and we're busily  
15 working on the pre-requisite that we need to then  
16 go ahead with a full application. And those are  
17 the departmental strategic plans which we're in the  
18 final stages of under Dr. Shah's direction. A  
19 community health assessment which our data people  
20 are putting together. And, finally, the state  
21 health improvement plan which the PHHPC public  
22 health committee under Dr. Boufford's leadership is  
23 helping us with and will be a nice segue into her  
24 presentation from that committee. But we're making  
25 a lot of progress on the State Health Improvement



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2 Plan at this point. And the premium in the eyes of  
3 the creditors for this plan are that we have a lot  
4 of stakeholder input, and we are going to be  
5 having, as Dr. Boufford will report, a meeting of  
6 our ad hoc workgroup next Monday where we'll  
7 summarize a lot of that stakeholder input, but we  
8 have had a tremendous amount of input, stakeholder  
9 input into this process and we'll talk a little bit  
10 more about that.

11 We are in the process that we have put  
12 together 12 workgroups at the state health  
13 department to deal with each of the 12 domains  
14 around accreditation. These are the ten essential  
15 public health services plus additional  
16 administrative categories of 12 different areas  
17 where we need to get our protocols, paperwork in  
18 order for the accreditation. If you've ever been  
19 through an academic accreditation process, I think  
20 this is probably something similar to that where  
21 you need to have documented a lot of your  
22 processes, procedures, protocols and demonstrate  
23 how those are effective. So, we have those groups  
24 underway.

25 We hope to be able to submit the three

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2 prerequisites with our full application by the end  
3 of the year and then that will kick off a year  
4 period where we will undergo required training for  
5 the accreditation board and then have a site visit  
6 to the State Health Department to review our  
7 documentation essentially.

8 So, this is actually a lot of work, but  
9 it's also helpful I think to us to really  
10 demonstrate and go back and look at a lot of areas  
11 in the Department and be sure we're up to par and  
12 really practicing public health at the 2012 or  
13 higher level. So, we anticipate, although it is a  
14 lot of work, that will have benefits for us and  
15 also it helps to explain what we do -- what public  
16 health is and what we do at the health department  
17 to ensure the health of the public.

18 So, I'll be happy to answer any  
19 questions, but as I say this will be a nice segue  
20 into Dr. Boufford's presentation on the Public  
21 Health Committee.

22 DR. STRECK: Ms. Rautenberg.

23 MS. RAUTENBERG: I would just like to  
24 comment, Gus, that I was at a national meeting  
25 about two weeks ago and there was a lot of very

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2 positive buzz about the New York State Health  
3 Department coming forward in the voluntary  
4 accreditation environment. Obviously when a  
5 complex state comes forward it really is a  
6 leadership statement, and the accreditation people  
7 are totally thrilled.

8 DR. BIRKHEAD: Thanks for that comment.

9 And we've gotten some of that feedback as well and,  
10 in fact, we've actually gotten a little bit of  
11 funding from the Robert Wood Johnson Foundation and  
12 national interest essentially in our efforts  
13 because we are a big state. I guess we must be one  
14 of the first big states to come forward in the  
15 voluntary accreditation framework, as you say. So,  
16 yes, this is a big deal and we are getting a lot of  
17 attention out there.

18 DR. STRECK: Other comments or  
19 questions?

20 Thank you, Gus.

21 We'll now return to this site and I'll  
22 ask Dr. Boufford to give a report on Public Health  
23 Services.

24 DR. BOUFFORD: Thank you. Yes, just to  
25 transition from Gus' statement. The Public Health

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2 Committee of this council has been focused really  
3 on three things. The Prevention Agenda, which we  
4 are in the process, I'll tell you a little bit  
5 about where that process is in terms of revision  
6 for 2013 to 2017, and then its role as part of what  
7 are the conditions on the voluntary accreditation  
8 process, which we are charged to oversee. And then  
9 we've also been with John Ruge's committee very  
10 closely engaged at every step of the way on the  
11 reengineering revision of the CON process. So,  
12 those have been our major folks eye for the last  
13 while.

14 The plan that -- the Statement Health  
15 Improvement Plan that Gus mentioned is being  
16 developed with the leadership of the Public Health  
17 Committee and an Ad Hoc Committee that represents  
18 multiple stakeholders across the state. These are  
19 state level organizations, many of whom have  
20 antenna eye branches, groups at the local level  
21 which we hope they will help us to mobilize as the  
22 implementation stage goes forward. There are 21  
23 members of that committee and other people coming  
24 forward. They are academia business professional  
25 societies, hospital associations, the state and New

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2 York city managed care plans and a number of CBOs  
3 and other networks, public health organizations, so  
4 it's a lively group. We've met twice in extended  
5 meetings to develop what is essentially a power  
6 point presentation of the sort of core principles  
7 and kind of guiding goals around the development of  
8 this plan.

9 Then the priorities that have been  
10 proposed are in the areas of preventing chronic  
11 disease, advance healthy environment, healthy  
12 mothers, babies and children, preventing substance  
13 abuse, depression and other mental illness, and  
14 preventing HIV, STIs and vaccine preventable  
15 diseases, and we presented those in the past here  
16 in the committee.

17 We are really focusing very much  
18 upstream on primary prevention and really looking  
19 at the central risk factors and the broader  
20 determinants of health beyond the personal health  
21 care system. And we're very excited about the  
22 vision for New York as the healthiest state, which  
23 I have that as your vision. And that's a very  
24 strong emphasis on eliminating health disparities  
25 which is a very strong message.

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2 The power point presentation has been in  
3 a sense on the road for about the last six or eight  
4 weeks. And members of the Ad Hoc Committee have  
5 been presenting it to their own organization or  
6 constituency groups with whom they have contact.  
7 The Health Department has presented it far and  
8 wide. And I think the last count, my notes say 45,  
9 I think the last count is 51 such events and  
10 activities across the state. And the idea was to  
11 do two things. One is to get feedback on the last  
12 process which did include stakeholder engagement at  
13 the last Prevention Agenda upon how to make the  
14 process more broadly, involving of local  
15 constituents and broader community interest. And  
16 secondly on the implementation efforts that were  
17 made at the local level and what some of the  
18 constraints were there, and we're learning a lot  
19 about that.

20 I think the feedback -- and then,  
21 obviously, feedback on the priorities that were  
22 identified, are they the right ones, should there  
23 be others, and if people and organizations are  
24 particularly interested in engaging in one or the  
25 other of the priority areas, to identify themselves

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2 so we can come back to them in terms of  
3 constituting working groups.

4 Overall the feedback, I think, is  
5 generally positive, it is generally positive, about  
6 the five that have been selected. There haven't  
7 been any new ones that have been suggested instead  
8 of these. There has been a strong endorsement of  
9 the attention to health disparities and the  
10 involvement of action on broader determinants of  
11 health. There's been an ongoing concern that while  
12 we're not specifically focused on health care or  
13 management of illness, a real concern about access  
14 and that we keep that in mind in terms of access to  
15 care and access to programs. And this is one of  
16 the ten essential public health functions, which is  
17 that the Department of Health is suppose to assure  
18 access to high quality personal services. So, we  
19 will be keeping it in the frame in that context.

20 And the other feedback I think about the  
21 last process is that we know that we didn't get  
22 very far beyond planning at the local level in the  
23 last round with some exceptions to there were a  
24 number of localities that were able to get small  
25 grants from a HEAL round to actually implement and

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2 evaluate the results of their -- of what they did,  
3 and they were quite interesting and important, but  
4 we need to pay attention to after the planning  
5 stage and the priority setting stage helping to  
6 support implementation and also to build capacity  
7 at the local level for ongoing implementation and  
8 evaluation of health action in multi-state cultured  
9 groups.

10 So, to try to move that along we have  
11 the meeting Monday where we'll get the formal  
12 feedback, we'll ratify the priority areas and we'll  
13 have a proposal for the group to consider and  
14 hopefully agree that we'll have -- we're proposing  
15 five working groups, one for each of the priority  
16 areas with a co-leadership by the appropriate  
17 technical experts at the health department and  
18 private sector organization that works in those  
19 areas. And each of these groups will consist of 15  
20 to 19 participants. And we hope some of those  
21 people will have self-identified through the course  
22 of these consultations or we'll be reaching out to  
23 those to get, again, a multi sectorial engagement.  
24 We're hoping a number of people that are on the Ad  
25 Hoc Group will step forward to volunteer their



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2 organization, be part of one or more of these  
3 groups. They will be working over the summer to  
4 really take these primary prevention objectives,  
5 develop, identify what health outcomes they wish to  
6 see within those, how they propose to tackle them,  
7 who will need to be involved to make it work, how  
8 they're going to measure their success and the sort  
9 of timetable for implementation at local levels.  
10 Those will then support and really buy very  
11 extensive effort which has been underway for  
12 sometime by the state health department, to develop  
13 -- to sort of mobilize the evidence of these five  
14 priority areas so that people will have kind of a,  
15 if not a textbook at least a set of guidelines and  
16 framework to further support their work at the  
17 local level. They will be asked to pick one or  
18 more of these areas for their local plan. As you  
19 know, the state requires hospitals to provide a  
20 community service plan and local health departments  
21 to provide a community health plan. They are in  
22 sync again on the timetable, the three year  
23 timetable, and the hope is that they will agree  
24 with one or more of these goals as part of those  
25 plans. It's not mandated but, again, strongly

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2 encouraged, but there was good response to this  
3 last time and we have every reason to believe that  
4 there will be even more so this time. We hope to  
5 have the results of the state plan for this  
6 committee by October, November time, and that would  
7 then feed into the implementation stages which  
8 would be part of the application for accreditation  
9 beginning in January.

10 As Gus said, we have -- New York state  
11 has been awarded a \$200,000 grant from the Robert  
12 Wood Johnson Foundation which was terrific because  
13 this -- we have a very ambitious playing and  
14 implementation stage. And we'll able to get a  
15 little bit of additional staff support at a senior  
16 level to help manage this process under the  
17 leadership of Sylvia Pirini and Gus Birkhead. And,  
18 additionally, we're planning to carve out some of  
19 those found for a mechanism that would provide  
20 local capacity, but beyond the last round, which  
21 was really specific grant to specific localities  
22 really trying to identify entities that because  
23 they had the last round of award or have already  
24 convened groups of providers and health  
25 departments, will be able to help with technical

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2 assistance and capacity building in multiple sites  
3 as a result of this work.

4 So, the only other thing I wanted to  
5 mention is that our last meeting of the Public  
6 Health Committee on May 24th we did have a  
7 presentation by Julie Wilhems Djik, who is  
8 executive director of the Robert Wood Johnson  
9 county rankings project out of Wisconsin, the  
10 so-called match program which really looks at a set  
11 of determinants that are health determinants and  
12 social determinants like economic development,  
13 literacy rates, educational levels, that are  
14 available at county levels nationally. And this is  
15 -- they just issued their third set of national  
16 reports. And these have proven to be quite  
17 helpful. We had to hold this up. We did hand out  
18 copies of this.

19 And we spent time during her  
20 presentation really talking about the New York  
21 results by county. And so, we're hoping because of  
22 our interest in the broader determinants of health,  
23 to be able to use some of the indicators in the  
24 match project as well as county and local level to  
25 watch those as things that we want to move that

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2 needle, especially in the disparities area on some  
3 of the broader determinants area.

4 So, I think everybody is really excited,  
5 I hope they're energetic because they're going to  
6 need to be. After Monday we will have our game  
7 plan to report to you at the next meeting. So,  
8 thank you.

9 DR. STRECK: Questions for Dr. Boufford?

10 So, at the next meeting, just to be  
11 clear, do we get the final power point, is that one  
12 of our goals that we'll -- after all the 51 vetting  
13 episodes?

14 DR. BOUFFORD: Yes. We'll have the  
15 power point of what the 51 vetting episodes told  
16 us, and presumably we have the final list of  
17 priorities and the structure, agreed structure to  
18 go forward. That is all going to be discussed on  
19 Monday.

20 DR. STRECK: Other comments or  
21 questions?

22 Thank you.

23 We now move to Dr. Rugge and his report  
24 from the Health Policy Committee.

25 DR. RUGGE: Good morning. I'm pleased

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2 to say that the Health Planning Committee is  
3 bringing forward a report on time and by unanimous  
4 vote for consideration by the council. It includes  
5 a statement of mission and vision for CON and also  
6 a lucky 13 principles for reform, broader reform  
7 going forward followed by nine concrete  
8 recommendations for administrating streamlining of  
9 the process.

10 The plan is coordinated to flash through  
11 the screen in sequence. Those component reports I  
12 will not read or repeat, but there are a brief --  
13 of the mission, vision and principles. And Karen  
14 Lipson is doing the heavy lifting of describing one  
15 by one the recommendations we are making for  
16 streamlining.

17 I would hope that, Mr. Chairman, might  
18 have an opportunity after each for any  
19 clarification members of the council might have and  
20 perhaps update for public comment before I would  
21 propose a motion to adopt the report and a chance  
22 for any amendments.

23 DR. STRECK: One question. The public  
24 comment period is not something that we have at  
25 this council, so. I mean I think we can readily

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2 engage the council on any recommendations and you  
3 would make your motion after your presentation. Is  
4 that my understanding?

5 DR. RUGGE: Right. For clarification  
6 would be fine and after the motion would have any  
7 amendments that might be brought forward to members  
8 of the council.

9 DR. STRECK: Thank you.

10 DR. RUGGE: Mission. As you can see by  
11 the committee, CON is intended to help shape the  
12 delivery system for health care of New York in  
13 service of the triple A. We have come to  
14 understand CON as one of several tools available to  
15 and implemented by the state. In concert with  
16 those tools go through the -- of the system and  
17 provide oversight.

18 A further part of the vision. CON  
19 supports access to care, innovation in a dynamic  
20 fashion and cost control. Further, the CON needs  
21 to be targeted, carefully targeted to where it can  
22 make a helpful impact not to be universally applied  
23 to every conceivable project.

24 The CON process is informed by local  
25 conditions and is prepared for local -- to micro

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2 environmental considerations.

3 CON to support motherhood and apple pie.  
4 Once again, CON needs to be responsive to changes  
5 in the environment, changes like we may never have  
6 seen before, and should compliment the other tools  
7 including licensure, paper reform and inter --  
8 changes in the field.

9 All decisions of CON should be informed  
10 by local community and regional input, eventually  
11 with coordination at the statewide level certainly  
12 to involve this council.

13 And, perhaps most importantly, that  
14 we're no longer talking about CON applying simply  
15 to doctors' buildings, physical structures, but  
16 also to the care processing in the organization of  
17 care given throughout the state. Moving along.

18 The CON together with other regulatory  
19 tools needs to be carefully targeted. And that CON  
20 helps to promote service integration across  
21 accumulative care that too often has been siloed in  
22 the past between physical health and behavioral and  
23 mental health services.

24 I would conclude this part by saying  
25 that we understand these principles as having

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2 guided our work to date, but more importantly to be  
3 a safe center for the work to come, which is  
4 looking at a more fundamental reconsideration of  
5 CON and the role it plays and provide public  
6 oversight and input into shaping the system.  
7 Realizing that as we undertake CON redesign, we are  
8 really undertaking and understanding a potential  
9 redesign of all those other levers, policy levers  
10 that contribute to assuring health care everyone  
11 would like in the state.

12 That concludes our work on the mission,  
13 vision and principles for reform. We invite any  
14 commentary, and praise is welcome, maybe necessary.

15 DR. BOUFFORD: I just wanted to, for  
16 those that were not there, I just wanted to give a  
17 little praise for the chair, Dr. Ruge, who I think  
18 was very careful and very deliberate in requesting  
19 comments from those who had attended the hearing  
20 who had different points of view, and I think these  
21 statements are very strong consensus statements.  
22 So, I just wanted to give you credit for that so  
23 people would be aware of that.

24 DR. RUGGE: We began with a really wide  
25 diversity. We are not likely to come to a



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2 unanimous agreement, but through lots of hard work  
3 and careful thinking, realized how much consensus  
4 is possible, the different experience levels had  
5 had and struggling issue by issue, application by  
6 application.

7 Moving on to the somewhat harder lift.

8 MS. LIPSON: Thank you, Dr. Rugge. I  
9 just want to start with two preliminary things.  
10 One is I want to thank on behalf of the Department,  
11 members of the committee and all the stakeholders  
12 who were so engaged in this process and who  
13 provided a lot of important input into the  
14 development of these recommendations and the  
15 mission and vision.

16 I also just want to note that this slide  
17 deck is a summary of drafts that were distributed,  
18 draft report, I'm sorry, that were distributed to  
19 the committee and posted on the web. They look a  
20 little funny because they're showing the changes  
21 that the committee made, and I wanted to be sure  
22 that the committee saw that their changes were  
23 incorporated, but obviously once that report is  
24 adopted, so will convert the draft into the final  
25 version.

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2 So, to begin the discussion of the  
3 administrative streamlining recommendation. The  
4 first recommendation is probably the most dramatic  
5 change. It would eliminate Certificate of Need  
6 review for certain types of construction projects.  
7 It would retain licensing type reviews for those  
8 projects to ensure that they comply with physical  
9 plant standards, construction standards, but it  
10 would eliminate the need review and most financial  
11 reviews of these types of projects. And these are  
12 projects that don't involve a change in capacity, a  
13 change in services, major new medical equipment or  
14 a change that would affect access to care. So,  
15 Certificate of Need review would be retained for  
16 the projects on this slide, additions or  
17 decertifications or repurposing of feds, it would  
18 be retained for new extension sites, for changes in  
19 ED or surgery capacity, it would be retained for  
20 major new medical equipment or services, and it  
21 would be retained for facility replacement,  
22 relocation or closures.

23 We would, however, be eliminating CON  
24 for projects that would reconfigure services on the  
25 same campus or would renovate a facility without

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2 adding beds or services, so if double bedded were  
3 converted to single bedded rooms. If a facility  
4 wanted to bring in, for example, all of its  
5 pediatrics services in a single location on its  
6 campus, there would no longer be a need to review,  
7 and possibly no longer be a financial review for  
8 those types of projects.

9 DR. RUGGE: Any questions?

10 MS. LIPSON: Just two other points on  
11 that. The committee expressed some concern that  
12 the elimination of financial review would present  
13 some risk, one would be the risk of an increase in  
14 Medicaid spending if facilities were able to  
15 develop projects without any constraints. The  
16 other risk was that facilities that have  
17 competitive impulses or for other reasons might  
18 take on projects that they could not afford and  
19 would destabilize their finances. So the committee  
20 recommended that the Department put in place  
21 mechanisms to monitor and address increases in  
22 Medicaid spending that might occur due to  
23 relaxation of CON, and also recommend that the  
24 Department take steps to ensure the feasibility of  
25 projects proposed by financially fragile providers.

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2 DR. RUGGE: Any questions,  
3 clarification? Moving on.

4 MS. LIPSON: This proposal would reduce  
5 the number of outpatient services that we currently  
6 license. Right now we license about 60 services in  
7 outpatient settings and diagnostic treatment  
8 centers and hospital extension sites. This  
9 proposal would reduce that number to 23 services.  
10 The services that would continue to be licensed are  
11 listed in the report. In addition, we would  
12 replace the sort of catchall category of primary  
13 medical care as a license service with a medical  
14 services category because we have been using  
15 primary medical care to describe any service that  
16 is not listed specifically among our license  
17 services, and it's not really descriptive of some  
18 of the types of services that are offered in  
19 outpatient settings.

20 We would create a Registry of services  
21 that were previously licensed and no longer are.  
22 Not all services that are previously licensed, but  
23 many of them. This would include services that we  
24 think are important to track for planning purposes  
25 or for the public to determine where services are

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2 offered. And they would include services like  
3 family planning services, for example. And that  
4 Registry would be posted on line.

5 DR. RUGGE: Any questions?

6 MS. LIPSON: This next recommendation is  
7 aimed at promoting the integration of behavioral  
8 health and physical health services. The more  
9 complete description is included in your report,  
10 but it includes two components. One is -- one  
11 embodies the work that's currently underway between  
12 the Department of Health, the Office of Medical  
13 Health and the Office of Alcohol and Substance  
14 Abuse Services. And it would allow providers that  
15 are currently licensed by two or more agencies to  
16 add services at sites that they are -- at sites  
17 where they are currently not authorized to provide  
18 those services. So, for example, a hospital  
19 extension site that is licensed under Article 31 of  
20 the Mental Hygiene Law to provide clinic services  
21 and that provider seeks to add primary medical care  
22 services to that site would be able to do so  
23 through a streamlined process. In addition, there  
24 would be a single set of operating standards for  
25 those sites and a unified survey process for those

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2 sites.

3 The second component of this proposal is  
4 to streamline the processes for Article 28  
5 providers that we want to add that are not  
6 currently licensed to provide mental health or  
7 addiction services and want to add those services  
8 to their operating certificate. Right now those  
9 providers have to go through two application  
10 processes, one at the Department of Health and one  
11 of the mental hygiene agencies. This will allow  
12 them to simply apply to OHMS for those services.

13 The glitch is for hospital sponsored  
14 clinics, in order to receive reimbursement for  
15 mental hygiene services they have to be licensed  
16 under Article 28 by statute to get paid. So, that  
17 statute will have to be changed. And this  
18 recommendation includes seeking a change in the  
19 statute to allow hospital sponsored clinics to be  
20 reimbursed under the mental hygiene law and so that  
21 they won't have to have Article 28 license to  
22 provide those services.

23 DR. RUGGE: Any questions?

24 Moving on.

25 MS. LIPSON: This recommendation, Number

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2 4, has to do with the architectural review of the  
3 projects that come before us. Currently our  
4 architectural review is intended to perform two  
5 functions. One has to do with Certificate of Need  
6 itself. In other words, whether the facility is  
7 appropriately sized for the purpose that it's  
8 intended to serve, and whether the cost of the  
9 facility or the projects are appropriate to the  
10 scope of the project.

11 The second element of our architectural  
12 review has to do more with the licensure of the  
13 facility. It involves ensuring that the facility's  
14 physical plant is safe for patients, staff and  
15 visitors. It is intended to assure that there are  
16 appropriate fire safety elements of the  
17 construction and design and appropriate infection  
18 control elements of the construction and design.

19 As the report notes, we have been short  
20 staff in our architecture unit for a number of  
21 years. And this recommendation is intended to  
22 target the work of our architectural staff  
23 throughout the core mission, which is ensuring the  
24 safety of the physical plant. So, it proposes  
25 first to take the architectural review out of the

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2 PHHPC exhibit so that the architects don't have to  
3 spend time writing the summaries that you see in  
4 your PHHPC exhibit. It would also continue  
5 self-certification process that we have been  
6 piloting for about a year now. We have been  
7 allowing for certain types of projects architects  
8 retained by the applicant to certify to the  
9 compliance, construction and design of the project.  
10 This proposal would authorize us to adopt this as a  
11 routine matter, but it also adds in certain  
12 safeguards.

13 The first is that certain high risk  
14 projects would be excluded from self-certification,  
15 and those would include projects such as surgical  
16 suite renovation, new ambulatory surgery centers,  
17 both oxygen and medical staff storage, locked  
18 inpatient or residential units, and new hospital  
19 and nursing home construction. In addition, this  
20 recommendation would require the Department to  
21 audit a percentage of self-certified projects for  
22 compliance and also to disqualify professionals  
23 associated with noncompliant self-certified  
24 projects.

25 Finally, this proposal would recommend



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2 as we expand the Dormitory Authority's role in  
3 architectural reviews. We have a Memorandum of  
4 Understanding with the Dormitory Authority that  
5 allows providers to opt for a DASNY review of their  
6 project in lieu of the DOH review and to pay DASNY  
7 for its services. The goal of this recommendation  
8 would be to contract with DASNY to take on a  
9 portion of DOH's reviews.

10 DR. RUGGE: Is everyone still with us?

11 Any comments?

12 Moving on.

13 MS. LIPSON: This recommendation would  
14 permit administrative processing of CON amendments  
15 related to changes in cost, financing or agreements  
16 like these agreements. Currently these types of  
17 amendments have to come back before the council if  
18 the applicant seeks to change the project after CON  
19 approval. So, under this proposal these types of  
20 amendments would no longer come back to you.  
21 Certain types of amendments would continue to come  
22 back to you, a change in the operator of an  
23 applicant facility, for example, a change in the  
24 number of beds or the types of services that are  
25 approved or a change in the location of a project

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2 would continue to be subject to PHHPC review. An  
3 increase in the scope of a project would also  
4 continue to be subject to PHHPC review.

5 DR. RUGGE: Any further comment?

6 Moving on to Number 6.

7 MS. LIPSON: Occasionally this council  
8 approves projects for establishments with a limited  
9 life, and typically those projects are ambulatory  
10 surgery centers and sometimes special need CHHAs.  
11 Often when we approved projects with a limited life  
12 we impose a condition requiring the providers to  
13 serve a specified percentage of Medicaid  
14 beneficiary or specified percentage of special  
15 populations. And when that provider's  
16 establishment comes up for expiration the provider  
17 comes back to us seeking either an unlimited life,  
18 so to speak, or an extension of their  
19 establishment. We've had providers who have strong  
20 compliance records and met all their conditions  
21 come back to us and the council members say why are  
22 we seeing these projects, you know, can't you just  
23 approve them internally. So, this proposal would  
24 give us within DOH to approve those types of  
25 projects administratively. We would have to change

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2 the sort of legal way in which we approve those  
3 projects. We would no longer be putting a limited  
4 duration on the establishment. Instead we would  
5 put a limited duration on the operating  
6 certificate. Because only this council can approve  
7 an establishment, the Department can't do that, but  
8 the department can renew an operating certificate.

9 DR. RUGGE: Any questions, comments?

10 MR. ROBINSON: Can you just clarify what  
11 the difference would be for the establishment  
12 versus the operating certificate besides the one  
13 we're establishing for limited life? Thank you.

14 MS. LIPSON: So, you would no longer  
15 establish a limited life. You would direct us to  
16 put a limit on the operating certificate. So, when  
17 the operating certificate expires, we would, at  
18 DOH, receive the applicant's report just, like we  
19 do now, and review the report on their operations  
20 and whether or not they met the conditions, and  
21 then we would determine whether or not to renew the  
22 operating certificate.

23 MR. ROBINSON: So if you don't renew the  
24 operating certificate, would that then come back to  
25 the council for sort of termination of the

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2 establishment or not?

3 MS. LIPSON: I believe in the report it  
4 says if providers are not renewed they have the  
5 ability to appeal to the council.

6 MR. KRAUT: Could I just follow-up on  
7 that question. And I think Mr. Robinson's point is  
8 probably the same, this is -- how nuance, this  
9 can't be nuanced, let me put it this way, because  
10 this was we needed a very clear procedure to  
11 basically tell an applicant if you did not do what  
12 you said you were going to do you're dead on that  
13 date when it comes up to renew it. There's no  
14 extensions. I mean, it really has to be very clear  
15 that if you didn't meet the Medicaid obligation  
16 that we have established but you think there's  
17 progress, you get to do it if you didn't follow  
18 your SPARCS data, you're not getting a renewal of  
19 the certificate. You have to stop. I mean, the  
20 practical impact of what you just said, will they  
21 then not be able to build after that date the  
22 determination is made and effectively their  
23 certificate they can't participate in Medicaid,  
24 Medicare, any of the programs? That's what we're  
25 trying to accomplish.

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2 MS. LIPSON: If you don't have an  
3 operating certificate you can't bill Medicare or  
4 Medicaid. I'm not sure how -- I think it you tried  
5 to bill a commercial provider or continued to  
6 provide health care at a health care facility  
7 without an operating certificate you would be a  
8 stop law.

9 MR. KRAUT: Well, I just -- I'm just  
10 hoping that whatever procedures you put in place  
11 that would be the intent because there are appeal  
12 process, there's appeals other than the council,  
13 you could appeal to the court, but you could do an  
14 Article 78 hearing. You know, there's all of those  
15 appeals which you probably could do now anyway.  
16 Right? So, we're not changing any of this, but  
17 we're trying to send a message here. And you think  
18 that this will permit us to send that message?

19 MS. LIPSON: Yes. I don't think it  
20 changes anything from that perspective.

21 MR. ROBINSON: So you don't think it's  
22 necessary -- this makes a lot of sense and we're  
23 happy with that. So ones where you decide to not  
24 or cease the operating certificate, somehow in that  
25 closure that's okay, if it's not closure then a

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2 route back to the council with a recommendation  
3 from DOH to terminate the establishment in some  
4 fashion or be a part of that procedure. So, I just  
5 want to make sure. If, as Mr. Kraut said, if that  
6 is sufficient with the termination of the operating  
7 certificate that's fine. Otherwise, I think we  
8 want to route back with an action by the council.

9 MS. LIPSON: What the report says is any  
10 applicant that fails to satisfy CON conditions  
11 including its commitment to serve Medicaid  
12 beneficiaries or other populations or regions,  
13 would be required to be presented to the PHHPC for  
14 approval.

15 MR. ROBINSON: Okay. That's good.

16 DR. RUGGE: Any other questions?

17 Moving on to Number 7.

18 MS. LIPSON: This proposal streamlines  
19 the process for certain changes in ownership. And  
20 I should have specified on the slide that this  
21 applies to Article 28 providers only because the  
22 problem arose with respect to Article 28 providers.  
23 36 and 40 providers are not subject to this  
24 particular statute. And it applies to limited  
25 liability companies and partnerships only, business

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2 corporations are also not subject to this  
3 particular statute. So this proposal would  
4 streamline the process for small changes in  
5 ownership, changes in ownership of less than ten  
6 percent when those small changes amount to a 25  
7 percent change over five years or less. Right now  
8 those types of proposals require a full review,  
9 full CON application review by this council. We  
10 would propose to implement a streamlined  
11 application process for those changes and seek  
12 legislation to permit administrative review of  
13 those changes. So that means those changes if the  
14 legislation passed, would no longer come back to  
15 the council for review.

16 DR. RUGGE: Any questions?

17 Moving on.

18 MS. LIPSON: This proposal also relates  
19 to the establishment of operators. We have had  
20 some difficulty as you know gathering information  
21 on compliance concerning operators with interest in  
22 facilities out of state. This proposal would allow  
23 those applicants to submit affidavits on their  
24 related facilities out of state compliance if we  
25 are unable to obtain that information from the

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2 other state agencies, and this applies only to  
3 hospitals and agencies.

4 The proposal would also reduce the  
5 statutory lookback period concerning compliance  
6 from ten years to seven years. And the reason for  
7 that is particularly with respect to out of state  
8 facilities. It's often very difficult to get  
9 information going back ten years. I believe  
10 there's a seven year record retention requirement  
11 for Medicare, so we thought that seven years might  
12 be a more acceptable number.

13 DR. RUGGE: Any questions?

14 On to our ultimate recommendation.

15 Moving on.

16 MS. LIPSON: This relates to the  
17 continued enhancement of the NYSE-CON system. It's  
18 been a tremendous success and it's been really  
19 helpful so far in enabling us to improve our  
20 processing performance. But currently it only  
21 covers the reviews up to the approval of the CON,  
22 it doesn't cover the post CON licensing piece. In  
23 other words, the plan review and the preopening  
24 surveys, we'd like to expand NYSE-Con so we can  
25 track projects through the entire process from



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2 application through the opening of the facilities.

3 We also want to strengthen its project tracking and

4 searching functionality, and it's important to

5 improve public access to CON information including

6 notices. Now we have a notice process for certain

7 nonclinical projects and licensing information.

8 Some members of the council have also noted that it

9 will be very helpful to the public if you get

10 automated notification when there's a change or

11 status on a project, and that's included as well.

12 DR. RUGGE: Any questions?

13 I would like to thank members of the

14 committee for being so very available for flying in

15 from all around the state and perseverance. I

16 think it's clear that any single member of the

17 committee could have taken a few hours and done all

18 this work and written recommendations, but we were

19 grateful for Karen and the staff, and DOH applied

20 themselves so diligently and carefully. And I also

21 want to thank Dr. Boufford in bringing the Public

22 Health Committee and generating the broader

23 platform for this work. We had outside -- Art

24 Streader writing background reports and Greg Burke

25 who really provided expert to council and

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2 background not only to this project but, again, to  
3 center stage for going forward.

4 We expect to come back as a committee at  
5 our December meeting with a broader set of  
6 recommendations regarding more fundamental  
7 redesign, but in the meantime we would move  
8 adoption of this committee report with the mission,  
9 vision recommendations for reform and nine specific  
10 recommendations for a bit of streamlining.

11 A VOICE: Second.

12 A VOICE: So moved.

13 DR. STRECK: So we've had the formal  
14 report and recommendations one by one and a motion  
15 and a second.

16 Is there a discussion on the  
17 recommendations from the committee, further  
18 discussion?

19 Hearing none I would ask for a vote.  
20 Those in favor of the motion as presented please  
21 indicate so by saying "Aye."

22 (A chorus of Ayes.)

23 DR. STRECK: Those opposed?

24 Thank you. And, John, thanks to the  
25 committee. I'm looking at all the scheduled work

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2 you put in. The hours are well into the hundreds  
3 or more for the committee and all the individuals  
4 who work there. So, I think -- and the fact that  
5 you did obtain a consensus is important and I guess  
6 this is the building block for your fundamental  
7 recommendations, those are the ones that are  
8 coming.

9 DR. RUGGE: We haven't started the  
10 warmup. This one was the little league.

11 DR. STRECK: We'll take these and move  
12 on with the group.

13 We are now prepared to move on and I  
14 believe next would be Mr. Kraut. Oh, Dr.  
15 Gutierrez, I'm sorry. I will turn the program over  
16 to you for the Codes and Regulations.

17 DR. GUTIERREZ: Thank you very much. My  
18 name is Dr. Gutierrez, I chair the Codes and  
19 Regulations and Legislation Committee. We met and  
20 reviewed two regulations on the May 24th meeting.  
21 One is an emergency adoption recommendation  
22 regarding Nursing Homes Sprinkler Systems for -- a  
23 permanent version for this, same measures was for  
24 discussion. There was another measure which is a  
25 regulation concerning information policy and other

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2 reporting requirements for the SPARCS commission.

3 The Nursing Home Sprinkler System

4 regulation was on first and was presented for

5 emergency adoption. It was on as an emergency

6 because of a national federal mandate that

7 specifies that on or before August 13, 2013 all

8 nursing homes must be protected by a supervised

9 automatic sprinkler system. CMS has not indicated

10 that there would be any extension of that deadline,

11 and there would be severe penalties such as losing

12 Medicare certification if a facility is out of

13 compliance.

14 The measure is designed to assist

15 eligible nursing homes, those defined as those

16 being financial distressed test identified in the

17 regulation with access in the credit market to

18 finance the cost of equipment. Another capital

19 cost directly related to the installation of an

20 automatic sprinkler system that is compliant with

21 the federal regulations. It is intended to

22 accelerate reimbursement for those facilities that

23 meet the test as an effort to entice potential

24 lenders to make loans that might not otherwise

25 make.

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2 The Department is requiring facilities  
3 who would receive such funding to deposit them in a  
4 separate account identified for the purpose of just  
5 paying the debt service on any loan for sprinkler  
6 systems update they need to make. This is intended  
7 to give potential lenders security that the funds  
8 will be available to pay the debt service incurred.

9 The committee unanimously voted to  
10 recommend adoption to the full council, and I so  
11 move.

12 A VOICE: Second.

13 DR. STRECK: It's been moved and  
14 seconded. I would have to ask Charley or somebody,  
15 this is the first time Codes and Regulation has  
16 gotten into debt financing.

17 MR. ABEL: To my knowledge.

18 DR. STRECK: There's a yes I hear. It's  
19 a creative stimulus package, put it that way.

20 Comments or questions on the  
21 recommendation?

22 Hearing none I would ask for those in  
23 favor of the committee's recommendation to say  
24 "Aye."

25 (A chorus of Ayes.)

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2 DR. STRECK: Opposed?

3 Thank you, Dr. Gutierrez. The motion  
4 passed.

5 DR. GUTIERREZ: It was then reported  
6 that the permanent version of this regulation is  
7 identical to the emergency section. It is  
8 currently going through the regulatory process.  
9 Once it completes the review process and the public  
10 comment period it will be brought back to PHHPC for  
11 consideration for adoption.

12 DR. STRECK: I would say the probability  
13 of the passage is high.

14 DR. GUTIERREZ: Yes.

15 The next item on the agenda was a  
16 discussion of the Information Policy and Other  
17 Reporting Requirements for the Statewide Planning  
18 and Research Cooperative System also known as the  
19 SPARCS provision.

20 The Department's three main objectives  
21 in this proposal are: Number 1, to delete the  
22 obsolete language. Number 2, to realign with  
23 current practices. And Number 3, to add new  
24 provisions including provisions for mandated  
25 outpatient and data collection. All with the

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2 original intent of SPARCS to be a prominent data  
3 set used for the evaluation and advancement of  
4 health care. This proposal removes sections that  
5 were making it difficult to keep in line with the  
6 data collection efforts such as -- to get involved  
7 in data element name, the name of methodology for  
8 defining the data, and pieces that refer to a  
9 council and hospital information that never  
10 convened, and a passage that related to an  
11 institutional cost report because now it's in  
12 another section.

13 Section 400.18 Title 10 has been  
14 significantly reorganized and modified to reflect  
15 the current function of the SPARCS program and in  
16 the manner in which this SPARCS operates. In  
17 addition of new data elements, will align SPARCS  
18 data elements with the National Uniform Billing  
19 Committee, otherwise known as NUBC, and National  
20 Electronic Data Interchange known as NEDI. As  
21 providers strongly prefer a single collection  
22 timetable for all types of SPARCS data, collection  
23 would also align on a single timeframe. Waivers of  
24 fees for SPARCS data would be limited to New York  
25 state agencies or county or local state health

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2 departments for health care related purposes.  
3 Health care facilities will continue to receive  
4 their own data. Facilities would continue to  
5 receive the type of data the health care facility  
6 submits, such as inpatient and ambulatory surgery,  
7 emergency department or outpatient services data  
8 set for the purpose of rate determination and rate  
9 appeal.

10 The Data Protection Review Board,  
11 otherwise none as DPRB provision, has been modified  
12 as well. New provisions are being added to improve  
13 the operations of SPARCS, release of data and the  
14 collection of the new outpatient services. These  
15 are PRB improvements and enhance oversight,  
16 enhanced private protection and scope. Council  
17 members discussed how CON should not be removed by  
18 PHHPC unless that provider is current with the  
19 SPARCS submission, fully compliant and up to date.  
20 It is noted that being current with SPARCS is a  
21 condition for compliance for a service entity.

22 And that, Mr. Chairman, concludes my  
23 report. Thank you very much.

24 DR. STRECK: Thank you for that tour of  
25 health care acronyms.



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2 Any further comments or questions?

3 Now we will turn to the Project

4 Establishment and Project Review Committee.

5 Mr. Kraut.

6 MR. KRAUT: Thank you, Dr. Streck. I'm  
7 going to report on the results of the Establishment  
8 and Project Review Committee actions taken on May  
9 23, 2012. We've had a little change in the  
10 schedule here, so just bear with me.

11 There are no Category 1 Applications.  
12 Category 2 Applications these are recommended for  
13 approval with a member recusal without dissent by  
14 the HSA or without a dissent of the Establishment  
15 and Project Review Committee. I'm waiting for --  
16 okay. Dr. Shah is here and we need Dr. Shah for  
17 one vote.

18 Let me start with Application 112323 C,  
19 New York Presbyterian Hospital - Columbia  
20 Presbyterian Center. Dr. Boutin-Foster has recused  
21 herself and she is out of the room.

22 This is to create an 18-bed bone marrow  
23 transplant comprised of 12 EMT beds, six medical  
24 surgical beds to create an 18-bed unit. New York  
25 Presbyterian proposes to add 18 new net beds as

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2 follows: Eight new allogenic beds, transfer four  
3 existing ABMT beds from six garden north and add  
4 ten medical surgical beds for autologous patients  
5 in readmission.

6 OHSM recommended approval. The  
7 committee recommended approval with conditions and  
8 contingencies. There was no discussion. And I so  
9 move.

10 DR. BERLINER: Second.

11 DR. STRECK: There's been a motion in  
12 favor with a second.

13 Is there a discussion on the motion?

14 Hearing none, those in favor of the  
15 motion please say "Aye."

16 (A chorus of Ayes.)

17 DR. STRECK: Opposed?

18 Thank you.

19 MR. KRAUT: Dr. Bouton-Foster will  
20 remain out of the room. And I'll call application  
21 11144 C, Lincoln Medical and Mental Health Center.  
22 In addition to Dr. Bouton-Foster, Dr. Sullivan has  
23 declared a conflict, Dr. Bhat has declared a  
24 conflict. And Dr. Boufford, I know you declared --

25 DR. BOUFFORD: I thought I should be

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2 out. No?

3 MR. KRAUT: You are declared a conflict  
4 as well, so you have to recuse yourself.

5 We still have a quorum. And the reason  
6 we needed Dr. Shah to come back in, in order for  
7 this proposal to be approved at this meeting we  
8 need 13 affirmative votes, that would require both  
9 Dr. Shah to participate in the voting and Dr.  
10 Streck as well. Hold on. Where's Dr. Yang?

11 Meanwhile, we're constructing a new  
12 30-bed psychiatric inpatient unit at Lincoln  
13 Medical and Medical Health Center and add 15-beds  
14 to the currently approved 45-bed for a total of  
15 60-beds. Dr. Martin has declared an interest. And  
16 as soon as Dr. Yang returns we'll be permitted to  
17 vote.

18 We will suspend action on this  
19 application and ask them to return.

20 Sorry. We'll have to ask you to leave  
21 again once Dr. Yang returns.

22 I'll call Application 121088 C, Millard  
23 Fillmore Suburban Hospital in Erie County. An  
24 interest declared by Mr. Booth. To certify a  
25 10-bed level to neonatal intensive care unit by

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2 converting six licensed maternity beds,  
3 transferring two critical care beds and two  
4 rehabilitation beds from DeGraff Memorial Hospital  
5 to Millard Fillmore Suburban Hospital. Converting  
6 the 4-beds to NICU beds for a total compliment of  
7 10 NICU beds for Millard Fillmore Hospital.

8 OHSM recommended approval. The  
9 committee recommended approval with conditions and  
10 contingencies. There was no discussion.

11 Application 121093 C, St. Cabrini  
12 Nursing Home in Westchester County. An interest  
13 has been declared by Mr. Fassler. To purchase and  
14 become the operator of Cabrini Center for Nursing  
15 and Rehabilitation long-term home health care  
16 program.

17 OHSM recommended approval with  
18 conditions and the committee recommended approval  
19 with conditions. And there was no discussion. And  
20 I so move.

21 DR. BERLINER: Second.

22 DR. STRECK: The motion has been made  
23 and seconded for these applications.

24 Discussion?

25 Hearing none, those in favor "Aye."

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2 (A chorus of Ayes.)

3 DR. STRECK: Opposed?

4 Thank you.

5 MR. KRAUT: I'm now going to move the  
6 batch of application for establishment and  
7 construction for acute care services.

8 121169 E, NYHB, Inc., in Kings County to  
9 establish NYHB, Inc. as an active parent over the  
10 New York Methodist Hospital, a New York community  
11 hospital of Brooklyn.

12 Approval with contingencies is  
13 recommended. Approval with contingencies was also  
14 recommended by the committee. There was no  
15 discussion.

16 Now the applications for ambulatory  
17 surgery centers.

18 112179 B, Amsterdam REC, LLC doing  
19 business as Amsterdam Regional Eye Center in  
20 Montgomery County, to establish and construct a  
21 single specialty ophthalmology surgery center.

22 OHSM recommended approve for a five year  
23 limited life with conditions and contingencies.  
24 The committee recommended approval for a five year  
25 limited life with conditions and contingencies.

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2 There was no discussion.

3 112379 E, the Surgery Center of  
4 Orthopedic Associates, LLC, in Dutchess County to  
5 establish and construct a multispecialty  
6 free-standing ambulatory surgery center to be  
7 located at 1910 South Road in Poughkeepsie. For  
8 the record a new map has been provided and is  
9 included in the exhibits.

10 OHSM and the committee recommended  
11 approval for a five year limited life with  
12 conditions and contingencies. There was no  
13 discussion.

14 Now applications for diagnostics and  
15 treatment centers - establishment and construction.

16 Application 101101 B, Street Corner  
17 Clinic Inc. in Kings County to establish and  
18 construct a D&TC to be called Street Corner, Inc..  
19 The D&TC will consist of a main site and two mobile  
20 health vans that will make five stops each in  
21 regular locations throughout Brooklyn and Staten  
22 Island.

23 OHSM and the committee recommended  
24 approval with conditions and contingencies and  
25 there was no discussion.

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2 We have two restated certificates of  
3 incorporations. Elizabeth Church Manor Home  
4 Corporation seeking approval to change its name to  
5 UMHECM Corp.. James G. Johnson Memorial Nursing  
6 Homes to UMHJGJ Corp., seeks approval to change its  
7 name to MNHJGJ Corp.. Obviously they're doing  
8 these to make it more convenient.

9 There's also a certificate of amendment  
10 to the certificate of incorporation for NYU  
11 Downtown Hospital Chinese Community Partnership of  
12 Health Foundation, Inc., would like to change its  
13 name to the New York Downtown Hospital Chinese  
14 Community Partnership for Health Foundation, Inc..

15 The committee recommended approval.

16 There was no discussion.

17 I then have a series of Home Health  
18 Agency Licensure. 1633-L, 1712-L, 1688-L, 1944-L,  
19 1667-L, 1623-L, 1844-L, 1765-L, 1919-L, 1587-L,  
20 1689-L, 1971-L, 1969-L, 1706-L, 1923-L, 1889-L,  
21 1965-L, 1800-L, 1937-L, 1939-L, 1789-L, 1973-L,  
22 1975-L, 1961-L, 1922-L, 1922-L, 2113-L, 1976-L,  
23 2099-L.

24 The committee recommended approval with  
25 conditions. There was no discussion. With

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2 contingencies, I'm sorry. There was no discussion.

3 And I so move the batch.

4 A VOICE: Second.

5 DR. STRECK: Moved and seconded.

6 Discussions?

7 DR. BOUFFORD: I deeply apologize for  
8 interrupting your run there. I just want to raise  
9 a concern about mobile units. And just for the  
10 record going forward, there was nothing --

11 MR. KRAUT: This is Street Corner  
12 Clinic, 101101B.

13 DR. BOUFFORD: Yes. There has been some  
14 evidence that while mobile vans are a really good  
15 idea in many instances especially in rural  
16 underserved areas, they can very often interrupt a  
17 pattern of primary care relationship between  
18 underserved populations living in a particular  
19 neighborhood where the clinic shows up, this is  
20 kind of fun and different and we're attractive.  
21 And that may be fine, but -- and I notice they're  
22 going after individuals who are homeless and other  
23 people who are in compromised circumstances. But  
24 it may be we want to ask the applicant to be  
25 explicit about the degree to which they would refer



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2 individuals treated in the mobile units in their  
3 own facility if that's their goal or with some kind  
4 of backup relationship to the other facilities in  
5 the geographic area. Because it's a concern. It's  
6 not as straightforward as it might appear going  
7 forward. And if we're going to start doing more of  
8 these sort of things, I just wanted to put that on  
9 the record. Thank you.

10 DR. STRECK: Thank you.

11 Other comments or questions on any of  
12 the applications in the batch presented?

13 Hearing none, those in favor of the  
14 motion please say "Aye."

15 (A chorus of Ayes.)

16 DR. STRECK: Opposed?

17 Thank you.

18 MR. KRAUT: Thank you. I'm now going to  
19 ask Dr. Sullivan, Dr. Bhat, Dr. Boutin-Foster and  
20 Dr. Boufford to recuse themselves. Everybody else  
21 stay in the room.

22 I am now just recounting what I said  
23 before. I'm recalling Application 111444 C,  
24 Lincoln Medical and Mental Health Center in the  
25 Bronx. In addition to those four people who have

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2 recused themselves and have left the room, Dr.  
3 Martin has declared an interest.

4 I stated this before and once again I  
5 move the application for approval with conditions  
6 and contingencies as recommended. There was no  
7 discussion by the committee.

8 A VOICE: Second.

9 DR. STRECK: Moved and seconded.

10 Is there any further discussion?

11 Hearing none, those in favor "Aye."

12 (A chorus of Ayes.)

13 DR. STRECK: Opposed?

14 We'll note that all voted.

15 Thank you.

16 MR. KRAUT: You can ask them to please  
17 return to the room.

18 I'm now going to move Category 2  
19 Applications were recommended for approval with one  
20 of the following: There was a recusal, there was  
21 without dissent by the HSA, without dissent by the  
22 Establishment and Project Review Committee. The  
23 first are the applications for diagnostic and  
24 treatment centers establishment and construction.

25 112042 B, The Chautauqua Center in

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2 Chautauqua County. An interest was declared by  
3 Mr. Booth. To establish and construct a diagnostic  
4 and treatment center at 314 Central Avenue in  
5 Gunkirk.

6 Both OHSM and the committee recommended  
7 approval with conditions and contingencies. There  
8 was no discussion.

9 Application for Hospice. 121049 E,  
10 Lewis County Hospice in Lewis County. An interest  
11 was declared by Mr. Booth. To transfer ownership  
12 of the Lewis County Hospice to Lewis County  
13 Hospital.

14 OHSM and the committee recommended  
15 approval with no discussion.

16 Application for residential health care  
17 facility. 112156 E, Parkview Operating Co, LLC,  
18 doing business as Westchester Center for  
19 Rehabilitation and Nursing in Westchester County.  
20 At the time Mr. Fensterman recused himself but he  
21 is not in the room today. To establish Parkview  
22 Operating Company LLC as the new operator of the  
23 Westchester Center for Rehabilitation and Nursing.

24 OHSM and the committee recommended  
25 approval with contingencies. There was no

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2 discussion.

3 Application for Certified Home Health  
4 Agencies. 121018 E, Lewis County General Hospital  
5 doing business as Lewis County General Hospital  
6 Certified Home Health Agency in Lewis County.

7 Mr. Booth declared an interest.

8 This is to transfer ownership of Lewis  
9 County Public Health Agency Certified Home Health  
10 Agency Program to Lewis County Hospital.

11 OHSM and the committee recommended  
12 approval with no discussion.

13 121219 E, L. Woerner, Inc. doing  
14 business as HCR. Interest were declared by  
15 Ms. Hines and Mr. Booth. This is to acquire the  
16 Clinton County Certified Home Health Agency and  
17 Long-term Home Health Care Program an add Clinton  
18 County to the existing operating certificate.

19 OHSM approval with conditions is  
20 recommended, as did the committee. There was no  
21 discussion.

22 I now have the following Home Health  
23 Agency Licensures. 1986-L, interest declared by  
24 Mr. Booth and Ms. Hines. 1856-L, interest declared  
25 by Mr. Booth. 1798-L, interest declared by

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2 Mr. Booth and Ms. Hines. 1977-L, interest declared  
3 by Mr. Fassler. 2033-L, interest declared by  
4 Mr. Booth. 2112-L, an interest -- I'm sorry. No.  
5 I'll move that as a batch.

6 DR. GUTIERREZ: Second.

7 DR. STRECK: Moved.

8 The batch as delineated has been moved  
9 and seconded.

10 Is there a discussion?

11 Hearing none, those in favor please say

12 "Aye."

13 (A chorus of Ayes.)

14 DR. STRECK: Opposed?

15 Thank you.

16 MR. KRAUT: I'm now going to move  
17 Application 2112-L, which is CL Healthcare, Inc. in  
18 Bronx County. Mr. Fassler is recusing himself and  
19 is leaving the room. He has left the room.

20 The committee has recommended approval  
21 for this, and I so move.

22 A VOICE: Second.

23 DR. STRECK: Moved and seconded.

24 Discussion?

25 Hearing none. Those in favor "Aye."

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2 (A chorus of Ayes.)

3 DR. STRECK: Opposed?

4 Thank you.

5 MR. KRAUT: I will now ask Mr. Fassler  
6 to return to the room.

7 I'll call Category 5 Application. This  
8 is the application for dialysis services. 092158  
9 B, DV Corporation doing business as Riverside  
10 Dialysis. This is to establish and construct a  
11 20-station dialysis center at 145 Sawmill Road in  
12 Yonkers and change the ownership through the sale  
13 of the current sole member of 90 percent of the  
14 membership interest in LLC to Deveter of New York  
15 Inc.. The application amends and supersedes  
16 Application 062342-B.

17 OHSM and the committee recommended  
18 approval with -- I'm sorry. OHSM and the committee  
19 recommended disapproval of this application. And I  
20 so move.

21 A VOICE: Second.

22 DR. STRECK: Moved and seconded.

23 Is there a discussion on this motion of  
24 disapproval? Any commitments, questions?

25 Hearing none, those in favor of the

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2 motion as presented please say "Aye."

3 (A chorus of Ayes.)

4 DR. STRECK: Opposed?

5 Thank you.

6 MR. KRAUT: And I have one other to  
7 report out to you. This is Application 082143 E,  
8 OMOP, LLC doing business as Orchard Manor Inc. in  
9 Orleans County. This is to establish OMOP, LLC as  
10 the new operator of the Orchard Manor, Inc., and  
11 transfer the entire membership interest of Nathan  
12 Stern to Moisha Shiner resulting in a hundred  
13 percent membership interest for Mr. Shiner.

14 The council did not -- the Establishment  
15 Committee has deferred this application for one  
16 meeting cycle to allow time for the applicant to  
17 respond to council members' questions and,  
18 therefore, has been deferred. I just do this as a  
19 matter of reporting to the full council.

20 Dr. Streck, that's the report of the  
21 Establishment and Project Review Committee.

22 DR. STRECK: Thank you.

23 With that have we other business before  
24 the committee today?

25 Our next meetings are scheduled for July

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2 25th and 26th.

3 MS. RAUTENBERG: On the 25th every  
4 committee will be meeting?

5 MS. FROST: We're still working that  
6 out.

7 DR. STRECK: With that there's no  
8 further business. We will adjourn this meeting of  
9 the Public Health and Health Planning Council.  
10 There is lunch for the council members available  
11 following the meeting.

12 Thank you all for your attendance and  
13 work today.

14 (Time noted: 12:00 p.m.)

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C E R T I F I C A T I O N

I, SHERRY SPALLIERO, a Court Reporter  
and Notary Public, within and for the State of New  
York, do hereby certify that I reported the  
proceedings in the within-entitled matter, on June  
7, 2012, and that this is an accurate transcription  
of these proceedings.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 11th day of June, 2012.

\_\_\_\_\_

SHERRY SPALLIERO

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

**August 9, 2012**

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**REGULATION**

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

**Exhibit #2**

Dr. John Palmer, Vice Chair

**For Emergency Adoption**

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

**For Discussion**

Section 400.25 of Title 10 NYCRR – Nursing Quality Indicators

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 section, 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 eligible 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 a schedule setting forth by month the estimated debt service payable over the life of the financing. Such schedule, 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 section 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, which authorizes the Council to “adopt and amend rules and regulations, subject to the approval of the commissioner” and which further provides that such rules may address the “establishment...of rates, payments, reimbursements, grants and other charges...” for medical facilities, including nursing homes.

### **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 Sections 2803 and 2805-t of the Public Health Law, a new Section 400.25 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby added, to be effective upon publication of a Notice of Adoption in the New York *State Register*, to read as follows:

A new Section 400.25 is added to read as follows:

**Section 400.25 Disclosure of Quality and Surveillance Related Information**

(a) *Scope.* Every general hospital and residential health care facility with an operating certificate pursuant to the requirements set forth in Public Health Law Article 28 shall make available to any member of the public and to the commissioner of any state agency responsible for licensing or accrediting the facility, or responsible for overseeing the delivery of services either directly or indirectly, information regarding nursing quality indicators upon request.

(b) *Definitions.* For purposes of this section, current evidenced-based definitions and quality measures of nationally recognized governmental, health and nursing quality experts have been utilized. Expectations regarding the definitions and quality measures will be revised to comport with these changing standards. The following terms currently have the following meanings:

- (1) *Acuity* means the nursing care requirements of patients or residents.

- (2) *Case mix* means the differences in patients or residents within a population in terms of their physical and mental conditions, and the resources that are used in their care.
- (3) *Methods used in determining and adjusting staffing levels to patient care needs* means the procedures and processes used to determine staffing based on patient or resident case mix and/or acuity.
- (4) *Registered Professional Nurse* means a person who is licensed and currently registered as a Registered Professional Nurse pursuant to Article 139 of the New York State Education Law.
- (5) *Licensed Practical Nurse* means a person who is licensed and currently registered as a Licensed Practical Nurse pursuant to Article 139 of the New York State Education Law.
- (6) *Unlicensed assistive personnel* means individuals trained to function in an assistive role to nurses in the provision of patient care, as assigned by and under the supervision of the registered professional nurse.
- (7) *Unit* means a distinct location providing patient care in a general hospital or residential health care facility distinguished from other distinct locations by name, number or other patient specific factors.
- (8) *Shift*, for purposes of this regulation, means a 24 hour period of time as a whole or divided into parts as appropriate to the reporting facility.
- (9) *Direct care nursing staff* are unit based Registered Professional Nurses, Licensed Practical Nurses and unlicensed assistive personnel who actually provide direct patient or resident care greater than 50% of their shift.

- (10) *Skill mix means the percentage of the total number of direct care patient/resident hours worked by Registered Professional Nurses, Licensed Practical Nurses and unlicensed assistive personnel each.*
- (11) *Patient/resident day means the number of days of patient/resident care provided by a unit over a prescribed period of time.*
- (12) *Complaint and Survey outcomes means the final conclusions of complaint investigation(s) filed with any state or federal regulatory agency or accrediting agency and survey(s) resulting in citation(s).*
- (13) *For General Hospitals Fall means an unplanned descent to the floor with or without injury to the patient including unassisted and assisted falls whether they result from physiological or environmental reasons.*
- (14) *For Residential Health Care Facilities Fall means an unintentional change in position coming to rest on the ground, floor or onto the next lower surface with or without injury to the resident including intercepted falls.*
- (15) *Fall Injury Levels for General Hospitals means the degree of injury resulting from a fall and designated as moderate, major or fatal as follows:*
- (i) *Moderate: falls that involve suturing, application of steri-strips/skin glue, splinting or muscle/joint strain.*
  - (ii) *Major: falls that involve surgery, casting or traction, or require consultation to rule out neurological or internal injury or patients with coagulopathy that receive blood products as a result of the fall.*
  - (iii) *Fatal: falls that involve injuries that cause the patient's death. Fatal falls do not include falls caused by physiologic events.*

- (16) *Fall Injury Level for Residential Health Care Facilities* means the degree of injury resulting from a fall designated as major and defined as follows:
- (i) Major: falls that involve bone fractures, joint dislocations, closed head injuries with altered consciousness or subdural hematoma.
- (17) *Healthcare acquired pressure ulcer* means a localized injury to the skin and/or underlying tissue as a result of pressure or pressure in combination with shear acquired after admission to a healthcare facility.
- (18) *Healthcare setting associated infections* means any localized or systemic patient condition that: (1) resulted from the presence of an infectious agent(s) or its toxin(s) as determined by clinical examination or by laboratory testing; and (2) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting.
- (19) High risk residential health care facility residents who have pressure ulcers means those residents who have medical conditions that may predispose them to developing a pressure ulcer.

(c) *Nursing Quality Indicators*. Nursing quality indicators are nurse staffing indicators and nurse sensitive patient outcome indicators.

(1) Nurse Staffing Indicators

(i) Nurse staffing indicators for general hospitals:

- (a) Nursing hours per patient day, which is the actual number of hours of nursing care provided by direct care nursing staff per patient day per unit per shift;

- (b) Registered Professional Nurse staffing indicators as follows:
  - (1) Number of Registered Professional Nurses who actually provide direct nursing care per unit per shift;
  - (2) Percentage of total direct nursing care hours actually provided by Registered Professional Nurses per unit per shift;
  - (3) Registered Professional Nurse hours per patient day, which is the actual number of hours of nursing care provided by direct care Registered Professional Nurses per patient day per unit per shift; and
  - (4) Registered Professional Nurse to patient ratio, which is the number of patients assigned to and cared for by one direct care Registered Professional Nurse per unit per shift.
- (c) Licensed practical nurse staffing indicators are as follows:
  - (1) Number of Licensed Practical Nurses who actually provide direct nursing care per unit per shift;
  - (2) Percentage of total direct nursing care hours actually worked by Licensed Practical Nurses per unit per shift; and
  - (3) Licensed Practical Nurse hours per patient day, which are the actual number of hours of nursing care provided by direct care Licensed Practical Nurses per patient day per unit per shift.

- (d) Unlicensed assistive personnel staffing indicators are as follows:
  - (1) Number of unlicensed assistive personnel who actually provide direct patient/resident care per unit per shift; and
  - (2) Percentage of total direct patient/resident care hours actually provided by unlicensed assistive personnel per unit per shift.
  
- (ii) Nurse Staffing Indicators for Residential Health Care Facilities:
  - (a) Total number of direct resident care staff and the number of Registered Professional Nurses, Licensed Practical Nurses, and unlicensed personnel utilized to provide direct resident care per facility, per unit and per shift;
  - (b) The percentage of the total direct resident care staff made up by Registered Professional Nurses, Licensed Practical Nurses, and unlicensed personnel each of per facility, per unit and per shift; and
  - (c) Total number of hours of direct resident care actually provided by Registered Professional Nurses, Licensed Practical Nurses and unlicensed personnel per facility, per unit, per shift; and
  - (d) Number of hours of direct nursing care actually provided by Registered Professional Nurses and Licensed Practical Nurses per resident day per facility, per unit, per shift.
  - (e) Staff to patient ratios for Registered Professional Nurses and Licensed Practical Nurses actually providing direct nursing care per facility, per unit, per shift.

(2) Nurse Sensitive Patient Outcome Indicators

(i) General Hospitals

- (a) Falls with injury rate as indicated by the frequency in which falls result in a fall injury level of moderate, major or fatal per applicable unit calculated with a frequency consistent with federal quality improvement initiatives;
- (b) Healthcare setting acquired pressure ulcers as indicated by the percent of patients with facility acquired pressure ulcer(s) of the skin that are determined to be stages II, III, IV, unstageable, and suspected deep tissue injury per applicable unit calculated with a frequency consistent with federal quality improvement initiatives;  
and
- (c) Healthcare acquired infection (HAI) rates per applicable unit calculated with a frequency consistent with federal quality improvement initiatives for the following:
  - (1) Central line associated blood stream infection (CLABSI);
  - (2) Catheter associated urinary tract infection (CAUTI); and
  - (3) Ventilator associated (pneumonia) event (VAE).

(ii) Residential Health Care Facilities

- (a) Percent of long-stay residents who experienced one or more falls with major injury;
- (b) Percentage of high-risk short-stay residents with new or worsening

pressure ulcers Stage II-IV;

(c) Percentage of long-stay residents with urinary tract infections.

*(d) Disclosure.*

- (1) Hospitals and residential health care facilities shall provide upon request by a member of the public, by the Commissioner, or by any Commissioner of a state agency responsible for licensing or accrediting the hospital or residential health care facility or responsible overseeing the delivery of services either directly or indirectly, the following items:
  - (i) Methods used in determining and adjusting staffing levels to patient/resident nursing care needs;
  - (ii) Nursing quality indicators as set forth in subdivision ( c ) of this section;
  - (iii) Complaint and survey final conclusions as set forth at subdivision (b)(10) of this section; and
  - (iv) Identification of the source(s) and date(s) for data disclosed.
  
- (2) Timeliness of data disclosed.
  - (i) Data disclosed shall cover a period of no less than three months and not to exceed the most recent twelve-month period prior to the date of request.
  - (ii) A facility shall make such information available to a requestor no later than 30 business days from the date of receipt of the request.



(3) Data disclosure

- (i) The format of data to be disclosed to requestors should be guided by existing format of the data when the request is received and ease of translation of data from the existing format to format requested.
- (ii) Existing data from different sources can be used as resources for the data to be disclosed as long as they satisfy the data request.
- (iii) Facilities should make reasonable efforts to disclose requested data in the format requested.

(e) Policy, Procedure and Recordkeeping

- (1) Facilities shall have policies and procedures for documentation and management of requests and responses to requests for nursing quality indicator data.
- (2) Records shall be kept of requests made and filled for nursing quality indicator data for a period of no less than two years from the date the request for information was received.

## REGULATORY IMPACT STATEMENT

### **Statutory Authority:**

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803 and 2805-t.

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

Section 2805-t specifies that the Commissioner shall promulgate rules and regulations on the disclosure of nursing quality indicators including: (1) the number of hours of total nursing care per patient per day; (2) the number of registered nurses providing direct care, the ratio of patients per registered nurse providing direct care, the number of RN care hours per patient per day and the percent of RN hours out of the total number of direct care nursing hours; (3) the number of licensed practical nurses providing direct care, the number of LPN care hours per patient per day and the percent of LPN hours out of the total number of direct care nursing hours; (4) the number of unlicensed personnel utilized to provide direct patient care and the percent of unlicensed personnel hours out of the total number of direct care nursing hours; (4) the incidence of select adverse patient care occurrences; (5) the methods used for determining and adjusting

staffing levels and patient care needs and the facility's compliance with these methods; and (6) *outcomes* of complaint investigation(s) filed with any state or federal regulatory agency or accrediting agency and survey(s) resulting in citation(s), including but not limited to significant medication errors.

**Legislative Objectives:**

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost. The objective of PHL Section 2805-t is to provide the public with information regarding nursing staffing levels and nursing sensitive patient outcome indicators.

**Needs and Benefits:**

The Nursing Care Quality Protection Act, (Chapter 422 of the Laws of 2009), became law September 16, 2009, added PHL Section 2805-t and requires Article 28 facilities to disclose identified nursing quality indicator information upon request to any member of the public, and to the Commissioner of any state agency responsible for licensing the facility or responsible for overseeing the delivery of services by the facility, or any organization accrediting the facility. PHL Section 2805-t directs the Commissioner to promulgate regulations regarding disclosure of nursing quality indicators to such requestors. This regulation is to provide, consistent with PHL Section 2805-t, standards for the disclosure of data regarding nursing staffing levels and nursing

sensitive patient outcome indicators. These regulations will require the use of established, standardized definitions and measurement criteria that are, to the extent possible, already being collected by facilities when calculating and disclosing nursing quality indicators.

## **COSTS:**

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

The Nursing Care Quality Protection Act, (Chapter 422 of the Laws of 2009), became effective March 15, 2010, 180 days after it was signed into law. Initial compliance was facilitated by guidance documents developed collaboratively with stakeholders and communicated to facilities via Dear Administrator letters. At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over two years. In addition, (1) CMS makes information regarding a number of these indicators available to the public on the Nursing Home Compare website, (2) prior to this law becoming effective over 50% of hospitals already participated in the National Database for Nursing Quality Indicators which required measurement and reporting of these indicators and (3) at this time a CMS requirement for hospitals is becoming effective that requires measurement and reporting of these same indicators. Any costs associated with initial implementation have already been born. Ongoing costs of implementation will be variable and relative to the number and complexity of requests for information received.

**Costs to Local and State Government:**

Article 28 facilities that fall under the jurisdiction of local or state government such as county nursing homes, clinics, or hospitals are affected and incur costs the same as any other Article 28 facility. Ongoing costs of implementation will be variable and relative to the number and complexity of requests for information received.

**Costs to the Department of Health:**

There will be no additional costs to the Department of Health. Implementation and surveillance of these provisions will be accomplished utilizing existing staff.

**Local Government Mandates:**

Article 28 facilities that fall under the jurisdiction of local or state government such as county nursing homes, or general hospitals will be affected and be subject to the same requirements as any other Article 28 facility.

**Paperwork:**

New paperwork associated with this regulation is minimal. Tracking and measurement of staffing data for payroll purposes is routine in all Article 28 facilities. Approximately 140 hospitals currently measure staffing and nursing sensitive patient outcome indicators in the manner required by these regulations as a result of their participation in the National Database for Nursing Quality Indicators (NDNQI). In addition, many other hospitals measure and track

these indicators without formal participation in NDNQI in order to benchmark their nursing quality against other facilities. Residential Health Care Facilities currently report nursing quality indicator measures/information through Minimum Data Set (MDS) submissions, so a substantial amount of new paperwork is also not expected for these providers. Maintenance of requests for nursing quality indicator information for the required three year period of time will be new but should not create considerable paperwork for Article 28 providers.

**Duplication:**

This proposal does not duplicate any state regulation. In an effort to avoid duplication of work for regulated facilities, when appropriate, efforts have been made to define nursing staffing and patient outcome indicator measurement and calculation in the same way as defined by the Center for Medicaid and Medicare Services (CMS), Centers for Disease Control and Prevention (CDC), New York State Department of Health (NYSDOH), National Quality Forum (NQF) and/or NDNQI—entities where these indicators are either already required for submission or, a submission plan is under development or, in the case of NDNQI, have been elected voluntarily for submission by NYS hospitals and/or LTC facilities.

There is an initiative by CMS requiring hospitals to participate in a nursing registry and submit nursing quality indicators consistent with this proposed regulation. The planned implementation date for submission of 2012 data is between April 1 and May 15, 2012.

**Alternative Approaches:**

These regulations are mandated by PHL Section 2805 – t (1). Efforts have been made to minimize any adverse impact by requiring standardized indicators that in many cases are already being collected by the facilities. Acceptable methods of disclosure include facility report cards, website displays; information included in patient information materials, and tailored reports based on submitted requests for this information.

**Federal Requirements:**

CMS Hospital Inpatient Quality Reporting (IQR) Program requires that the Structural Measures are reported annually and assess the characteristics and capacity of the provider to deliver quality healthcare. This includes Participation in a Systematic Clinical Database Registry for Nursing Sensitive Care. A hospital's Annual Payment Update is affected only when the hospital does not answer all required questions indicating participation or non-participation in a registry. For FFY 2013 those dates were April 1, 2012, and May 15, 2012 to complete.

The Centers for Medicare & Medicaid Services (CMS) began a national Nursing Home Quality Initiative (NHQI) in 2002. The nursing home quality measures come from resident assessment data that nursing homes routinely collect on the residents at specified intervals during their stay. These measures assess the resident's physical and clinical conditions and abilities, as well as preferences and life care wishes. These assessment data are converted to develop quality measures that show how well nursing homes are caring for their residents' physical and clinical needs. The Minimum Data Set (MDS) is currently in use to collect resident assessment data.

**Compliance Schedule:**

This regulation will take effect upon publication of a Notice of Adoption in the New York *State Register*.

**Contact Person:**

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

**Effect of Rule:**

The provisions of this regulation will apply to hospital and residential health care facilities authorized to operate pursuant to Public Health Law Article 28. Such facilities include: 232 general hospitals, and 634 residential health care facilities. Three general hospitals and 84 residential health care facilities are considered small businesses.

**Compliance Requirements:**

General hospitals and residential health care facilities will be required to disclose identified nursing quality indicators, including information associated with complaint investigations and surveys, and methods used to determine and adjust staffing levels upon request. Records of requests and facility response must be kept for three years in order for organizations to be able to track and show evidence of their compliance with requests for this information.

**Professional Services:**

None

**Compliance Costs:**

At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over two years. Ongoing costs of implementation will be variable and relative to the number and complexity of requests for information received.

**Economic and Technological Feasibility:**

It is be economically and technologically feasible for small businesses to comply with these regulations.

**Minimizing Adverse Impact:**

The regulations will require standardized measurement of nursing quality indicators and limit indicators to those that have been established as valid and reliable. The Department will not require hospitals and residential health care facilities to create additional reports to comply with these provisions. In order to minimize any adverse impact, the Department will allow facilities to use as acceptable methods of disclosure: facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

**Small Business and Local Government Participation:**

Outreach to the affected parties was and continues to be conducted. Affected parties were given the opportunity to contribute to the pre-publication development of the content and processes involved in implementation of this regulation. Organizations that represent the affected parties are given notice of this proposal by its inclusion on the agenda of the Codes and

Regulations Committee of the Public Health and Health Planning Council. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

## **RURAL AREA FLEXIBILITY ANALYSIS**

### **Types and Estimated Number of Rural Areas**

The proposed amendment will apply Statewide, including the 43 rural counties with less than 200,000 inhabitants, and the 10 urban counties with a population density of 150 per square mile or less.

### **Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services**

#### **Costs**

At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over two years. Ongoing costs of implementation will be variable and relative to the number and complexity of requests for information received.

#### **Minimizing Adverse Impact**

The regulations will require standardized measurement of nursing quality indicators and limit indicators to those that have been established as valid and reliable. The Department will not require hospitals and residential health care facilities to create additional reports to comply with these provisions. In order to minimize any adverse impact, the Department will allow facilities to use as acceptable methods of disclosure: facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

## **Rural Area Participation**

Outreach to the affected parties, including those in rural areas is being conducted. Organizations that represent the affected parties have been given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

## **JOB IMPACT STATEMENT**

Pursuant to the State Administrative Procedure Act (SAPA) Section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

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

**August 9, 2012**

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**Book A**

**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**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                      | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 121157 C             | Northern Westchester Hospital<br>(Westchester County) | Contingent Approval                       |

**Ambulatory Surgery Center – Construction**

**Exhibit #4**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|--|---|
| 1. | 112369 C             | Memorial Hospital for Cancer<br>and Allied Diseases<br>(New York County) | Contingent Approval                       |



# Public Health and Health Planning Council

## Project # 121157-C Northern Westchester Hospital

**County:** Westchester (Mount Kisco)  
**Purpose:** Establishment

**Program:** Acute Care Services  
**Submitted:** March 26, 2012

### Executive Summary

#### Description

Northern Westchester Hospital (NWH), a 233-bed not-for-profit acute care hospital located at 400 East Main Street, Mount Kisco, requests approval to construct 6 new operating rooms (ORs), and a 13-bed post-anesthesia care unit (PACU) in shell space over the facility's emergency department, along with other renovations in support of its surgical services.

NWH indicates that the project will remedy regulatory deficiencies in the existing OR suite and central sterile supply (CSS) suite. It will also increase surgical and procedural capacity, and redesign CSS for improved access. This will in turn allow additional space for OR case carts, and the addition of 4 new elevators that will be connected to the expanded CSS for vertical circulation.

NWH has recently completed a two-story addition under CON #091016-C. The first floor houses the expanded emergency room and a portion of the second floor was built as shell space for future use. Under CON #091016-C, the cost of the shell space that was not recognized for capital reimbursement, amounted to \$2,604,026.

In 1996, Healthstar Network, Inc. d/b/a Stellaris Health Network became the active parent and co-established operator of NWH. Stellaris Health Network, a not-for-profit corporation, is the sole member and supporter of NWH, White Plains Hospital Center, Lawrence Hospital Center and Phelps Memorial Hospital Association. The purpose of Stellaris is to preserve a strong community-based healthcare system in Westchester and Putnam counties.

Total project costs are estimated at \$42,172,321.

**DOH Recommendation**  
Contingent approval.

#### Need Summary

This project will increase surgical and procedural capacity, provide a new OR suite and technology, and correct regulatory deficiencies in the existing OR suite.

#### 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 \$6,172,321 in equity from the Hospital and its Foundation, along with \$36,000,000 in tax-exempt fixed rate bonds issued through the Westchester Local Development Corporation (25 yrs. @ 3.20%).

TD Bank will directly purchase the \$36,000,000 private placement bonds and hold them for a minimum of 10 years. In the eighth year, TD bank will consider renewing annual extensions beyond the tenth year. Should TD bank at that time (eight year), choose not to renew, the applicant will have two years to seek Letter of Credit or alternative bond financing enhancement.

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 15,381,514     |
|                     | <i>Expenses:</i>    | <u>11,205,884</u> |
|                     | <i>Gain/(Loss):</i> | \$ 4,175,630      |

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



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a bond resolution acceptable to the Department of Health. Included with the submitted bond resolution must be a sources and uses statement and debt amortization scheduled, for both new and refinanced debt. [BFA]
3. Submission of a Dormitory Authority of the State of New York (DASNY) design review recommendation found acceptable to the Department of Health, in accordance with the memorandum of understanding (MOU) executed between the Department and DASNY. [AER]

**Approval conditional upon:**

1. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

Northern Westchester Hospital (NWH) is 233-bed acute care hospital located at 400 East Main Street, Mount Kisco, 10549, in Westchester County. The facility seeks approval to construct six (6) new operating rooms (ORs), surgical support spaces and a new 13-bed PACU in existing shell space above the Hospital's new Emergency Department. The total number of ORs on Northern Westchester Hospital will total 13 upon project completion.

Northern Westchester Hospital (NWH) has the following certified beds and services:

| <b><u>Certified Beds</u></b> |                           |
|------------------------------|---------------------------|
| <u>Bed Category</u>          | <u>Certified Capacity</u> |
| Coronary Care                | 6                         |
| Intensive Care               | 10                        |
| Maternity                    | 27                        |
| Medical / Surgical           | 153                       |
| Neonatal Intensive Care      | 5                         |
| Neonatal Intermediate Care   | 5                         |
| Pediatric                    | 12                        |
| Psychiatric                  | <u>15</u>                 |
| <i>Total</i>                 | <i>233</i>                |

| <b><u>Certified Services</u></b>     |                               |
|--------------------------------------|-------------------------------|
| Ambulatory Surgery - Multi Specialty | CT Scanner                    |
| Clinical Laboratory Service          | Coronary Care                 |
| Emergency Department                 | Health Fairs O/P              |
| Intensive Care                       | Linear Accelerator            |
| Lithotripsy                          | Magnetic Resonance Imaging    |
| Maternity                            | Medical Social Services       |
| Medical/Surgical                     | Neonatal Intensive Care       |
| Neonatal Intermediate Care           | Nuclear Medicine - Diagnostic |
| Nuclear Medicine - Therapeutic       | Pediatric                     |
| Pharmaceutical Service               | Primary Medical Care O/P      |
| Psychiatric                          | Radiology - Diagnostic        |
| Therapy - Occupational O/P           | Therapy - Physical O/P        |
| Therapy - Speech Language Pathology  |                               |

Northern Westchester Hospital is authorized to operate hospital extension clinics at 4 locations in Westchester County offering services such as: Occupational and Physical Therapy, Speech Language Pathology, Primary Medical Care, Medical Social Services and Nuclear Medicine – Diagnostic.

The hospital has the following State designations:

- Level 3 Perinatal Center; and
- Stroke Center

NWH was cited by the Department of Health in August 2010 for several deficiencies in its current suite of ORs and Central Sterile Supply (CSS) suite. NWH states that many of the deficiencies have been corrected. However, the following deficiencies remain:

- the OR suite;
- non sleeping area exceeds 10,00 square feet and does not have appropriate fire separation;

- the anesthesia work room contains sterile supplies and is used as an entry way to the ORs;
- certain critical OR pathways are too narrow; and
- certain life safety codes have not been met.

This project will allow the hospital to address the issues cited by the Department in August 2010. The new ORs will also increase the hospital's surgical and procedural capacity. The hospital will have 13 ORs, including 6 new state-of-the-art, regulatory compliant ORs. The project will improve access to and redesign of the CSS. Upon completion, the space will operate as a separate OR suite, with its own recovery area and will work in conjunction with the neighboring OR suite.

#### Analysis

From 2007 to 2009, SPARCS and Institutional Cost Report data show that NWH's inpatient surgical and ambulatory surgery procedures totaled more than 14,000 cases per year. However, in 2010, the total number of combined cases decreased to less than 13,400 (Table 1). NWH states that the decline in outpatient use was due to negotiations issues with Empire Blue Cross/Blue Shield. According to the applicant, the issues were resolved, and its pre-2010 surgical volume has been restored.

| <i>Year</i> | <i>Inpatient Surgical Discharges</i> | <i>Ambulatory Surgery Procedures</i> | <i>Total</i> |
|-------------|--------------------------------------|--------------------------------------|--------------|
| 2007        | 3,197                                | 10,873                               | 14,070       |
| 2008        | 3,230                                | 11,618                               | 14,848       |
| 2009        | 3,299                                | 11,256                               | 14,555       |
| 2010        | 3,263                                | 10,133                               | 13,396       |

*Source: Inpatient Discharges SPARCS 2007 – 2010 and Ambulatory Surgery Procedures, Institutional Cost Reports, 2007 – 2010*

The need for operating rooms is calculated based on a standard of 800 to 1,200 cases per OR per year. Upon project completion, Northern Westchester Hospital proposes 13 operating rooms. The hospital's inpatient and outpatient utilization statistics support the need for the 13 ORs. Additionally, this project will enable the hospital to:

1. remedy regulatory deficiencies in the existing OR suite;
2. upgrade the OR suite to modern state-of-the-art OR technology; and
3. increase surgical and procedural capacity in order to accommodate current and future surgical cases.

#### Recommendation

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

## Programmatic Analysis

#### Project Proposal

Northern Westchester Hospital requests approval to modernize surgical services through the construction of six additional operating rooms, additional surgical support space and a 13-bed PACU in existing shell space. There will be no changes to services concurrent with the approval of this application.

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 Costs and Financing

Total project cost for the renovation and acquisition of moveable equipment is estimated at \$42,172,321, itemized as follows:

|                            |                |
|----------------------------|----------------|
| Renovation & Demolition    | \$20,438,966   |
| Design Contingency         | 2,002,616      |
| Construction Contingency   | 2,202,877      |
| Architect/Engineering Fees | 1,841,580      |
| Construction Manager Fees  | 726,950        |
| Other Fees                 | \$720,000      |
| Movable Equipment          | 9,245,495      |
| Telecommunications         | 1,401,469      |
| Financing Costs            | 1,626,300      |
| Interim Interest Expense   | 1,733,400      |
| CON Application Fee        | 2,000          |
| CON Processing Fee         | <u>230,668</u> |
| Total Project Cost         | \$42,172,321   |

Project costs are based on a December 3, 2012 start date with a thirteen-month construction period.

The applicant's financing plan appears as follows:

|   |                   |
|---|-------------------|
| Cash Equity (Applicant)   | \$4,172,321       |
| Contribution from Northern Westchester Foundation<br>(\$2-3 million depending upon need)                                      | 2,000,000         |
| Westchester Local Development Corporation tax-exempt bonds<br>(25 year maturity at an estimated 3.20% fixed rate of interest) | <u>36,000,000</u> |
| Total   | \$42,172,321      |

Northern Westchester Hospital Foundation has provided a letter confirming they will contribute between \$2,000,000 to \$3,000,000 to the project.

TD Bank will directly purchase the \$36,000,000 private placement bonds and hold them for a minimum of 10 years. In the eighth year, TD bank will consider renewing annual extensions, beyond the tenth year. Should TD bank at that time (eight year), choose not to renew, applicant will have two years to seek Letter of Credit or alternative bond financing enhancement.

### Operating Budget

The applicant has submitted the first and third years operating budgets, in 2012 dollars, as summarized below:

|                           | <u>Current Year</u> | <u>Third Year<br/>Incremental</u> | <u>Cumulative</u> |
|---------------------------|---------------------|-----------------------------------|-------------------|
| Inpatient Revenues        | \$51,200,741        | \$9,024,404                       | \$60,225,145      |
| Outpatient Revenues:      | <u>36,067,620</u>   | <u>6,357,110</u>                  | <u>42,424,730</u> |
| Total Revenues            | \$87,268,361        | \$15,381,514                      | \$102,649,875     |
| Expenses                  |                     |                                   |                   |
| Operating                 | \$40,907,766        | \$6,926,578                       | \$47,834,344      |
| Capital                   | <u>734,800</u>      | <u>4,279,306</u>                  | <u>5,014,106</u>  |
| Total Expenses            | \$41,642,566        | \$11,205,884                      | \$52,848,450      |
| Operating Surplus         | \$45,625,795        | \$4,175,630                       | \$49,801,425      |
| Utilization: (Procedures) | 9,538               | 1,681                             | 11,219            |
| Cost Per Procedure        | \$4,365.96          |                                   | \$4,710.62        |

Revenues and utilization are for the Surgical Department only and do not include all hospital overhead expense allocations.

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

|                          | <u>Inpatient</u> | <u>Outpatient</u> |
|--------------------------|------------------|-------------------|
| Medicaid For-For-Service | 1.43%            | .56%              |
| Medicaid Manage Care     | 2.10%            | 3.65%             |
| Medicare Fee-For-Service | 36.58%           | 18.24%            |
| Medicare Managed Care    | 7.65%            | 4.44%             |
| Commercial Managed Care  | 46.61%           | 65.26%            |
| Private Pay              | .77%             | 3.85%             |
| All Other                | 4.20%            | 3.24%             |
| Charity Care             | .66%             | .76%              |

Expenses are based upon historical experience adjusted for investment, rising costs and added staff to support the OR and CSS incremental volume. Utilization assumptions are based upon annual surgical growth of 3.3% between 2012 and 2016.

The estimated number of incremental procedures needed to cover the budgeted costs for the first year is 944 procedures and 1,225 procedures by the third year, which represents 97% and 73% of projected incremental utilization, respectively.

### Capability and Feasibility

The total project cost of \$42,172,321 will be provided as follows: \$6,172,321 in equity contributions from Northern Westchester Hospital and its Foundation along with the issuance of \$36,000,000 in tax-exempt bonds through the Westchester Local Development Corporation at the above stated terms. Letters of interest have been received from both the Westchester Local Development Corporation and TD Bank, respectively. Northern Westchester Hospital Foundation has provided a letter confirming they are prepared to contribute between \$2,000,000 to \$3,000,000 for the project. Presented as BFA Attachment A is Northern Westchester Hospital Association and Subsidiaries 2011 certified financial summary, which indicates the availability of sufficient resources to fund the project.

Working capital requirements are estimated at \$1,867,647, which appear reasonable based on two months of third year incremental expenses, and will be funded from operations. Presented as BFA Attachment B is the first year incremental cash flow analysis, which shows a positive increase in the cash balance.

Northern Westchester Hospital projects an operating incremental excess of \$283,574 and \$4,175,630 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies and current payment rates. The budget appears reasonable.

Review of BFA Attachment A shows that during 2011 Northern Westchester Hospital had operating income of \$13,449,220 and a non-operating loss of \$917,525, bringing the excess of revenues over expenses to \$12,531,695.

Also, during 2011, NWH experienced a non-cash pension related charge of \$15,584,119, dropping the unrestricted net assets by \$1,320,119. At the end of 2011, Northern Westchester Hospital's total net assets were \$78,707,808 and Northern Westchester Hospital Foundation's total net assets were \$13,724,022.

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

Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | 2011 Certified Financial Summary – Northern Westchester Hospital Association and Subsidiaries |
| BFA Attachment B | Cash Flow Analysis  |
| BHFP Attachment  | Map   |



# Public Health and Health Planning Council

## Project # 112369-C Memorial Hospital for Cancer and Allied Diseases

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

**Program:** Ambulatory Surgery Center  
**Submitted:** December 23, 2011

### Executive Summary

#### Description

Memorial Hospital for Cancer and Allied Diseases (Memorial Hospital), a 514-bed not-for-profit hospital located at 1275 New York Avenue, New York, requests approval to certify and construct an ambulatory surgery extension clinic at 1133 York Avenue, New York, to be known as the Outpatient Surgery Center.

The proposed Outpatient Surgery Center will have 12 operating rooms, four of which will accommodate robotic procedures, along with an 18 observation bed pre-surgical assessment area, 28 observation bed unit for post-anesthesia care unit/extended stay recovery, and other support functions. The observation beds are for up to 23-hour stays, and will not result in an increase in bed capacity for Memorial Hospital.

The proposed facility will provide Memorial Hospital with the opportunity to:

- Shift the majority of the outpatient operative cases from the main hospital operating rooms, thus creating the capacity for more incremental high intensity cases to be performed at Memorial Hospital;
- Create an extended stay recovery unit (up to 23 hours), in order to allow for recovery of patients who do not need to be admitted as an inpatient but cannot be discharged as quickly as other patients who undergo routine outpatient surgery; and
- Enhance the robotic surgery program through creating the properly sized operating rooms for these types of procedures.

Memorial Hospital, along with Sloan-Kettering Institute for Cancer Research, S.K.I. Realty, Inc., and others are incorporated affiliates of Memorial Sloan-Kettering Cancer Center (MSKCC). MSKCC has been designated as a "Comprehensive Cancer Center" by the National Cancer Institute, and is only one of 40 in the nation.

Total project costs are estimated at \$338,797,105.

#### DOH Recommendation

Contingent approval.

#### Need Summary

Upon project completion, Memorial will relocate its Surgical Day Hospital to the new site. It is projected that there will be 6,393 visits in year one and 8,304 by year 3.

#### 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

Total project costs will be funded as follows: \$35,000,000 gift from The Robertson Foundation; \$37,400,000 in land already owned; \$41,397,105 in equity and/or intra-company loans from MSKCC; with the remaining balance of \$225,000,000 coming from DASNY tax-exempt bonds (30 yrs. @ 5%).

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 64,544,000     |
|                     | <i>Expenses</i>     | <u>74,221,000</u> |
|                     | <i>Gain/(Loss):</i> | ( \$9,677,000)    |

The applicant says there is minimal incremental activity in the first three years of operations of the new extension clinic, as the volume is transferred from the main campus to the new extension clinic. As the main campus surgical volume builds back up to its current level, more positive results will be experienced. The applicant indicates that the hospital's overall operations can absorb these losses and they project that by the third year of operations the Outpatient Surgery Center will generate a positive cash flow with net operating revenues by the ninth year of operations.

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

## Recommendations

Health Systems Agency

There is no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

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

**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, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by May 4, 2018 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**August 9, 2012.**



# Need Analysis

**Background**

Memorial Hospital for Cancer and Allied Diseases (Memorial Hospital) is a 514-bed acute care hospital located at 1275 York Avenue, New York, 10021, in New York County. The applicant seeks to certify an ambulatory surgery extension clinic at 1133 York Avenue, New York, 10065, in New York County. Upon completion, Memorial Hospital plans to relocate its Surgical Day Hospital (SDH) to the new site.

Services to be added at the new Ambulatory Surgery extension clinic:

- Ambulatory Surgery - Multi-Specialty
- Pharmaceutical Service

Memorial Hospital has the following certified beds and services:

| <b>Table 1:<br/>Memorial Hospital for Cancer and Allied Services: Certified Beds by Service</b> |                         |
|---|-------------------------|
| <u>Bed Category</u>   | <u>Current Capacity</u> |
| Intensive Care  | 20                      |
| Medical / Surgical  | 457                     |
| Pediatric   | 37                      |
| Total   | 514                     |

| <b>Table 2:<br/>Memorial Hospital for Cancer and Allied Services: Certified Services</b> |                                     |
|--|-------------------------------------|
| Ambulatory Surgery - Multi Specialty   | Audiology O/P                       |
| Clinical Laboratory Service  | Coronary Care                       |
| CT Scanner   | Dental O/P                          |
| Intensive Care   | Linear Accelerator                  |
| Magnetic Resonance Imaging   | Medical Social Services             |
| Medical/Surgical   | Nuclear Medicine - Diagnostic       |
| Nuclear Medicine – Therapeutic   | Pediatric                           |
| Pharmaceutical Service   | Primary Medical Care O/P            |
| Radiology – Diagnostic   | Radiology-Theapeutic                |
| Renal Dialysis – Acute   | Therapy - Occupational O/P          |
| Therapy - Physical O/P   | Therapy - Speech Language Pathology |
| Transplant - Bone Marrow   |                                     |

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

Memorial Hospital seeks to certify a new Ambulatory Surgery extension clinic in New York County. The proposed project will establish a 12 operating room Outpatient Surgery Center devoted to furthering the effectiveness of advanced surgical procedures. In addition, the facility will also provide an academic, research and training platform with the potential for significant impact on cancer treatment.

The Surgery Day Hospital extension clinic will be constructed with the following:

- 4 of the 12 operating rooms will be built to accommodate robotic procedures;
- 18 bed pre-surgical assessment area;
- 28 bed post anesthesia care unit/extended recovery;
- sterile processing;
- pathology services;
- pharmacy;
- patient/visitor amenities – waiting areas, refreshment kiosk;
- staff amenities – staff lounge(s), café, business center, locker rooms;
- support service areas for: environmental services, facilities management, receiving/distribution; and
- loading dock.

The new facility will allow Memorial to shift the majority of its outpatient operative cases from the main hospital operating rooms to the proposed facility; thereby, creating capacity for incremental cases at the main campus; creating an extended stay recovery unit for patients that do not need to have an inpatient stay; and enhancing the robotic surgery program by creating right-sized operating rooms.

The hours of operation for the new site will be as follows:

- Monday through Friday 24 hours per day, 6 days/week;
- the extended stay unit will be the 23-hour, six day a week area to provide care for those patients requiring extended recovery time; and
- surgery will be preformed Monday through Friday from 7:30am to 7:30pm.

The main campus of Memorial Hospital, located seven (7) blocks away, will serve as the back-up hospital for the proposed facility.

**Analysis**

Memorial Hospital for Cancer and Allied Services has 514 total inpatient beds. In 2006, the hospital recorded 21,131 total inpatient discharges. By 2011, these discharges increased by 15.6 percent to 24,427. Approximately two-thirds of the hospital's discharges are allocated to major service category Medical/Surgical. During the period, these discharges increased by 16.0 percent from 13,485 in 2006 to 14,647 in 2011.

Memorial provides many outpatient services that are well utilized. For example, in 2006 the facility recorded 49,388 ambulatory surgical procedures. By 2010 these procedures increased by 35.1 percent to 66,722 (Table 3 and Table 3A).

| <b>Table 3:<br/>Memorial Hospital for Cancer and Allied Services: Inpatient Utilization</b>          |             |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Table 3A:<br/>Memorial Hospital for Cancer and Allied Services: Ambulatory Surgery Procedures</b> |             |             |             |             |             |             |
| <i>Table 3</i>   | <i>2006</i> | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> | <i>2011</i> |
| Inpatient Surgical Discharges  | 13,485      | 13,750      | 14,474      | 15,362      | 15,552      | 15,647      |
| Total Inpatient Discharges   | 21,131      | 21,819      | 22,618      | 23,423      | 24,381      | 24,427      |
| % Surgical   | 64          | 63          | 64          | 66          | 64          | 64          |
| <hr/>  |             |             |             |             |             |             |
| <i>Table 3A</i>  |             |             |             |             |             |             |
| ICR Amb/Surg Procedures  | 49,388      | 51,998      | 51,713      | 60,483      | 66,722      |             |

Source: SPARCS 206 – 2011 (Table 3)

Source: Institutional Cost Reports, 2006 – 2010 (Table 3A)

Conclusion

This project will allow the hospital to improve throughput and ensure that the needs of its patients are met in a timely manner. The population to be served currently receives cancer surgical care at Memorial’s main campus.

Recommendation

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

**Programmatic Analysis**

Project Proposal

Memorial Hospital for Cancer and Allied Diseases requests approval to construct an extension clinic to provide multi-specialty ambulatory surgery services. The new building will contain 12 operating rooms. Surgeries will be performed Monday through Friday from 7:30 am to 7:30 pm. The facility will be open 24 hours per day, six days per week, to accommodate patients requiring up to a 23 hour stay (including surgical time).

Upon completion of the project the hospital anticipates adding 280 FTEs by the end of year one and an additional 30 FTEs by the end of the third year of 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.

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

Recommendation

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

**Financial Analysis**

Total Project Cost and Financing

Total project cost for new construction and equipment is estimated at \$338,797,105 itemized as follows:

|                                |              |
|--------------------------------|--------------|
| Land Acquisition               | \$37,400,000 |
| Building Acquisition           | 4,200,000    |
| New Construction               | 162,389,370  |
| Site Development               | 1,928,013    |
| Temporary Utilities            | 1,172,205    |
| Asbestos Abatement and Removal | 482,004      |
| Design Contingency             | 8,197,669    |
| Construction Contingency       | 8,197,669    |
| Planning Consultant Fees       | 4,322,403    |
| Architect/Engineering Fees     | 13,277,727   |

|                               |                      |
|-------------------------------|----------------------|
| Construction Manager Fees     | 3,163,314            |
| Other Fees (Consultant)       | 8,274,479            |
| Movable Equipment             | 39,970,495           |
| Telecommunications            | 5,724,375            |
| Financing Costs               | 4,492,201            |
| Interim Interest Expense      | 33,750,000           |
| Con Application Fee           | 2,000                |
| Additional CON Processing Fee | <u>1,853,181</u>     |
| Total Project Cost            | <u>\$338,797,105</u> |

Total costs are based on a September 15, 2012 start date with a forty-two month construction period.

The applicant's financing plan appears as follows:

|   |                    |
|---|--------------------|
| Gift from The Robertson Foundation                | \$35,000,000       |
| Land (already owned & valued by an MAI appraisal) | \$37,400,000       |
| Equity and/or intra-corporate loan within MSKCC   | 41,397,105         |
| DANSY tax-exempt bonds (30 year term @ 5%)        | <u>225,000,000</u> |
| Total   | \$338,797,105      |

The applicant states that the Institution, which consists of Memorial Sloan-Kettering Cancer Center (MSKCC), Memorial Hospital for Cancer and Allied Diseases (Memorial Hospital), and other affiliated corporations, was given an 'AA' credit rating by Fitch Ratings and Aa2 by Moody's. If MSKCC does provide any funding, then Memorial Hospital's terms with MSKCC would be the same as previously stated to the Department of Health. Memorial Hospital is only obligated to pay its inter-corporate loan with MSKCC in the event they generate positive cash flow over the course of any year. Memorial Hospital's payment would be the amount of the excess cash flow. The loan is unsecured, without interest, and has no specific terms or final due date. Presented as Attachment A is Memorial Sloan-Kettering Cancer Center and Affiliated Corporations' 2011 Certified Financial Summary that shows over \$3.1 billion in cash, cash equivalents and investments.

#### Operating Budget

The applicant has submitted the first and third years' incremental operating budgets in 2012 dollars, as summarized below:

|  | <u>First Year</u>     | <u>Third Year</u>     |
|--|-----------------------|-----------------------|
| Revenues-Outpatient:   | \$34,288,000          | \$45,851,000          |
| Other Operating Income (A)   | <u>14,349,000</u>     | <u>18,693,000</u>     |
| Total Revenues   | \$48,637,000          | \$64,544,000          |
| Expenses:  |                       |                       |
| Operating  | \$45,340,000          | \$52,384,000          |
| Capital  | <u>22,239,000</u>     | <u>21,837,000</u>     |
| Total Expenses   | \$67,579,000          | \$74,221,000          |
| Excess Revenue over Expenses   | <u>(\$18,942,000)</u> | <u>\$ (9,677,000)</u> |
| Utilization: (Visits)  | 6,393                 | 8,304                 |
| <i>(A) Other operating revenues consist of physician billing revenues.</i> |                       |                       |

Incremental capital expense includes depreciation on the building of \$6,021,341 and depreciation on equipment of \$5,501,317 annually and interest expense of \$10,716,000 for the first year and \$10,314,000 for the third year following project completion.

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

|                            | <u>Outpatient</u> |
|----------------------------|-------------------|
| Medicaid Fee -for-Service  | 3.60%             |
| Medicaid Managed Care      | .06%              |
| Medicare Fee-for-Service   | 35.15%            |
| Medicare Managed Care      | .32%              |
| Commercial Fee-for-Service | 2.38%             |
| Commercial Manage Care     | 56.04%            |
| Private & all other        | 1.86%             |
| Charity                    | .59%              |

Expenses are based upon historical experience after adjusting for volume, investment, and rising costs. Utilization assumptions are based on historical patterns plus adjustments for hiring additional physicians and program expansion. The Outpatient Surgery Center expects 6,393 incremental visits in the first year of operation or an increase of 9.58% over 2010 data (the first year of operations is approximately five and half years from now, which makes the average increase only approximately 1.74% per year which is reasonable).

The applicant states by the beginning of the third year of operation the proposed facility will generate a positive cash flow. They also project positive operating revenue by the ninth year of operations.

According to Memorial Hospital in 2010, outpatient charity care was provided to 6,734 patients or 0.585% of total outpatient visits. This represents \$16,900,000 in charity care or 1.87% of outpatient revenues.

#### Capability and Feasibility

Total project cost of \$338,797,105 will be funded as follows: \$35,000,000 gift from the Robertson Foundation, \$37,400,000 in land already owned, \$41,397,105 in equity and/or intra-company loans from MSKCC, with the \$225,000,000 balance coming from DASNY tax-exempt bonds at the above stated terms.

Presented as Attachments A and B are Memorial-Sloan-Kettering Cancer Center and Affiliated Corporations' 2010 and 2011 certified financial summary and Memorial Hospital for Cancer and Allied Diseases' historical & projected financial summary for 2009 through 2018, which indicates the availability of sufficient resources for this project.

Working capital requirements are estimated at \$12,370,167, which appear reasonable based on two months of third year budgeted expenses. Presented as Attachment C is Memorial Hospital for Cancer and Allied Diseases' historical & projected cash flow for 2009 through 2018, which indicates working capital requirements can be met from operations.

The incremental budget for the first year and third years' of operations projects a loss of \$18,942,000 and \$9,677,000, respectively. These losses will be absorbed by operations.

Review of Attachment B, Memorial Hospital for Cancer and Allied Diseases' historical & projected financial summary for 2009 through 2018, shows Memorial Hospital will have a net income of \$98,884,000 after they absorb the first year loss. Revenues are based on prevailing reimbursement methodologies and current rate schedules. The budget appears reasonable.

As shown on BFA Attachment A, Memorial Sloan-Kettering Cancer Center and Affiliated Corporations had positive working capital and net asset positions during the period shown. Total assets increased by \$43,636,000 and \$295,954,000 in 2011 and 2010, respectively, growing to \$3,941,162,000 as of December 31, 2011.

#### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary for 2011 and 2010, Memorial Sloan-Kettering Cancer Center and Affiliated Corporations   |
| BFA Attachment B | Historical & Project Financial Summary 2009 -2018, Memorial Hospital for Cancer and Allied Diseases       |
| BFA Attachment C | Historical & Project Statement of Cash Flows 2009 -2018, Memorial Hospital for Cancer and Allied Diseases |
| BFA Attachment D | Detailed Cost Analysis  |

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

**August 9, 2012**

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**Book A**

**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**

**Ambulatory Surgery Centers – Construction**

**Exhibit #5**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 121208 C             | Hospital for Special Surgery<br>(New York County)<br>Ms. Regan - Interest | Contingent Approval                       |

**Residential Health Care Facility – Construction**

**Exhibit #6**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 121432 C             | Greater Harlem Nursing Home<br>Company Inc<br>(New York County)<br>Mr. Fassler – Interest<br>Mr. Fensterman – Recusal | Contingent Approval                       |



# Public Health and Health Planning Council

## Project # 121208-C Hospital for Special Surgery

**County:** Nassau (Uniondale)  
**Purpose:** Construction

**Program:** Ambulatory Surgery Center  
**Submitted:** April 13, 2012

### Executive Summary

#### Description

The New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery, a 205-bed voluntary acute care hospital, seeks approval to renovate its existing extension clinic located at 333 Earle Ovington Road Uniondale, and add as a certified service single-specialty ambulatory surgery in pain management. The proposed renovations will create one procedure room and associated space to accommodate the pain management procedures.

The Hospital for Special Surgery (HSS) initially set up this extension clinic to provide more in-depth imaging capabilities for its non-Article 28 medical staff's private practices, which are located at the same site but in a space separate and distinct from the clinic. The site was also recently approved for the addition of MRI services and a third x-ray room.

HSS is a member of the New York-Presbyterian Healthcare System and an affiliate of the Weill Medical College of Cornell University.

Total project costs are estimated at \$858,536..

**DOH Recommendation**  
Contingent approval.

#### Need Summary

The primary service area is Nassau County and the secondary service area is Suffolk and Queens Counties. The number of projected procedures is as follows:

First Year: 1,000  
Third Year: 1,040

The third year projections are based on a two percent annual increase. These procedures are expected to be performed by HSS-affiliated physicians.

Nassau County has no ambulatory surgery centers that provide pain management procedures. The four ASCs in Nassau County include two with gastroenterology services, one with ophthalmology services, and one with endoscopy services. Nassau County also has five multi-specialty ASCs.

#### 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 funded from equity.

|                     |              |                |
|---------------------|--------------|----------------|
| Incremental Budget: | Revenues:    | \$1,353,019    |
|                     | Expenses:    | <u>935,501</u> |
|                     | Gain/(Loss): | \$ 417,518     |

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



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

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

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

The Hospital for Special Surgery (HSS) seeks to add single-specialty ambulatory surgery in pain management as a certified service to its existing extension clinic at 333 Earle Ovington Road, Uniondale, 11553, in Nassau County. The proposed project also includes renovations to add one (1) procedure room to the extension clinic to accommodate the proposed pain management procedures.

It is projected that there will be 1,000 procedures performed in year one and 1,040 in year three.

### Analysis

The primary service area is Nassau County, and the secondary service area is Suffolk and Queens Counties.

The number of projected procedures is as follows:

|             |       |
|-------------|-------|
| First Year: | 1,000 |
| Third Year: | 1,040 |

The third year projections are based on a two percent annual increase. These procedures are expected to be performed by HSS-affiliated physicians.

Nassau County has no ambulatory surgery centers that provide pain management procedures. The four ASCs in Nassau County include two with gastroenterology services, one with ophthalmology services, and one with endoscopy services. Nassau County also has five multi-specialty ASCs (Source: HFIS).

### Conclusion

The proposed project will improve access to pain management services for patients of the Hospital for Special Surgery's extension clinic in Nassau County.

### Recommendation

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

## Programmatic Analysis

### Project Proposal

The Hospital for Special Surgery requests approval to add the single-specialty (Pain Management) ambulatory surgery service to an existing extension clinic located at 333 Earle Ovington Road, Uniondale. The hospital will also undertake requisite renovations to accommodate the requested service.

The facility expects to add 5.06 FTEs with the additional service. The service will utilize one procedure room.

### Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 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

### Lease Rental Agreement

The applicant has submitted a letter of interest to expand the current lease to include the new pain management service. The terms are summarized below:

|                        |   |
|------------------------|---|
| <i>Dated:</i>          | January 16, 2012  |
| <i>Premises:</i>       | 1,506 rentable square feet on the 1 <sup>st</sup> floor of a building located at 333 Earle Ovington Boulevard, Uniondale, New York  |
| <i>Landlord/owner:</i> | 333 Earle Ovington Boulevard SPE, LLC   |
| <i>Lessee</i>          | HSS Properties Corporation  |
| <i>Sub-Lessee:</i>     | Hospital for Special Surgery  |
| <i>Term:</i>           | 10 years & ten months (from substantial completion of expansion suite) \$52,710 (\$35.00 sq. ft.) plus an increase of 3.15% per annum. Renewable for one additional 5-year term |
| <i>Provisions:</i>     | Utilities, Taxes, Maintenance and Insurance   |

The applicant states that the lease is an arm's length arrangement between the landlord and HSS Properties Corporation (lessee), but not between HSS Properties Corporation and Hospital for Special Surgery (sub-lessee). HSS Properties Corporation, is an affiliate of Hospital for Special Surgery (HSS), and leases the facility from the landlord and then sub-leases the existing extension clinic space to HSS. The lease documents will be amended to add the space needed to accommodate the pain management service.

As per the agreement with the landlord, the rental payments will be based on 1,506 square feet, slightly less than the functional space calculated by the architect.

### Total Project Costs and Financing

Total project cost for renovation and acquisition of moveable equipment is estimated at \$858,536, itemized as follows:

|                            |              |
|----------------------------|--------------|
| Renovation & Demolition    | \$389,649    |
| Design Contingency         | 38,965       |
| Construction Contingency   | 38,965       |
| Architect/Engineering Fees | 38,965       |
| Other Fees                 | 25,750       |
| Movable Equipment          | 319,557      |
| CON Application Fee        | 2,000        |
| CON Processing Fee         | <u>4,685</u> |
| Total Project Cost         | \$858,536    |

Project costs are based on a September 1, 2012 start date with a four month construction period.

The applicant's financing plan appears as follows:

|                         |           |
|-------------------------|-----------|
| Cash Equity (Applicant) | \$858,536 |
|-------------------------|-----------|

### Operating Budget

The applicant has submitted the first and third years operating budgets, in 2012 dollars, as summarized below:

|                | <u>Year One</u> | <u>Year Three</u> |
|----------------|-----------------|-------------------|
| Revenues       | \$1,237,750     | \$1,353,019       |
| Expenses:      |                 |                   |
| Operating      | \$722,059       | \$779,488         |
| Capital        | <u>152,259</u>  | <u>156,013</u>    |
| Total Expenses | \$874,318       | \$935,501         |

|                           |           |           |
|---------------------------|-----------|-----------|
| Net Income or (Loss)      | \$363,432 | \$417,518 |
| Utilization: (procedures) | 1,000     | 1,040     |
| Cost Per Procedure        | \$874.32  | \$899.52  |

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

|                            |       |
|----------------------------|-------|
| Medicare Fee-for-Service   | 58.0% |
| Commercial Fee-for-Service | 39.0% |
| All Other                  | 1.0%  |
| Charity Care               | 2.0%  |

Utilization assumptions were based HSS-affiliated physicians' current volume of pain management procedures. The number and mix of staff were determined based on the experience of HSS, along with incorporating known staffing standards. The estimated breakeven point for the first and third years is approximately 70% of budgeted procedures.

#### Capability and Feasibility

The total project cost of \$858,536 will be provided from the hospitals accumulated funds. Presented as BFA Attachment A is the New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery 2010-2011 certified financial summary, which indicates the availability of sufficient resources.

Working capital requirements are estimated at \$155,917, which appear reasonable based on two months of third year budgeted expenses and will be funded through operations.

Hospital for Special Surgery projects an operating excess of \$363,432 and \$417,518 in the first and third years, respectively. Revenues are based on HSS affiliated physicians experience. The budget appears reasonable.

Review of BFA Attachment A shows that during 2010 and 2011, the New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery generated average positive working capital of \$221,538,500, and an average operating income of \$46,386,500 before an average charge for defined benefit pension and post-retirement benefits of \$33,345,500. Total net assets at the end of 2011 were \$422,850,000.

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

#### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | 2010-2011 Certified Financial Summary –New York Society for the Relief of the Ruptured and Crippled, Maintaining the Hospital for Special Surgery |
| BHFP Attachment  | Map   |



# Public Health and Health Planning Council

**Project # 121432-C**  
**Greater Harlem Nursing Home Company, Inc.**

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

**Program: Residential Health Care Facility**  
**Submitted: June 12, 2012**

## Executive Summary

### Description

Greater Harlem Nursing Home Company, Inc., a 200-bed not-for-profit residential health care facility (RHCF) located at 30 West 138<sup>th</sup> Street, New York, requests approval for renovation of the existing facility, land purchase, building construction and decertification of 25 RHCF beds, while developing a 30-bed Assisted Living Program (ALP).

This application amends and supersedes CON #101082-C, approved by the State Hospital Review and Planning Council in November 2010. This application is considered an amendment pursuant to 10 NYCRR 710.5(b)(2) because of the reduction of project scope. The financing arrangement is now 100% HEAL NY - Phase 12, and no taxable FHA mortgage will be sought. The project has been revised as stated below.

The existing 34-year old facility will receive the following improvements:

- Renovation of the spa/bathing rooms and dining/lounge areas on the resident care floors.
- New state of the art equipment in an enlarged physical therapy space.
- Floors 2 and 3 will house 34 residents each in 6 single rooms and 14 double rooms; Floor 4 will house 35 residents in 5 single rooms and 15 double rooms; and Floors 5 and 6 will house 36 residents each in 4 single rooms and 16 double rooms.
- Enlarged recreation/dining areas on each floor from 500 square feet to 1,024 SF.

The newly constructed 22,408 SF building will be dedicated to the ALP and consist of six floors with residents on Floors 4, 5 and 6. The first floor will be a dedicated entry lobby at street level with one elevator servicing all six floors of the ALP, reception area, public toilet and storage room. The second floor will be the home care staff office for the ALP, and the third floor will

be resident dining with serving pantry, meeting and activity spaces, staff/administration offices, janitor closet, resident laundry room and public and staff toilets.

Total project costs are estimated at \$5,358,349.

DOH Recommendation  
 Contingent approval.

### Need Summary

There will be a decertification of 25 residential health care beds and an addition of 30 assisted living beds, which will allow Greater Harlem Nursing Home to treat its patients in the appropriate care setting and to operate at optimal capacity.

| Current | Change | After Completion |
|---------|--------|------------------|
| 200     | -25    | 175              |

### Program Summary

Greater Harlem Nursing Home Inc. is currently in substantial compliance with the applicable codes, rules and regulations.

### Financial Summary

Project costs will be fully-financed via HEAL NY – Phase 12. The following budget was previously approved under CON #101082-C:

|         |                     |                   |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i>    | \$ 19,457,450     |
|         | <i>Expenses:</i>    | <u>19,358,154</u> |
|         | <i>Gain/(Loss):</i> | \$ 99,296         |

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

## Recommendations

Health Systems Agency

There is no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment from the Board of Directors to renovate all resident rooms and bathrooms for handicapped accessibility, and to update the facility to meet current Code standards within three years, or as soon as funds become available. [HSP]
3. Submission and programmatic review and approval of the final floor plans which fully satisfy the noted design issues. [HSP]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER, LTC]

**Approval conditional upon:**

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

**August 9, 2012.**

## Need Analysis

### Background

Greater Harlem Nursing Home received HEAL 12 grant funding to renovate and adapt to the changing patient need and the shift to assisted living care. The facility will be able to better serve patients in the community by adding a 30 unit assisted living program and decertifying 25 RHCF beds.

The facility is currently operating at 96.1%. The decertification of the 25 RHCF beds, the transitioning of 9 physical A's and B's to the assisted living program, and patient attrition will bring the facility to capacity upon project completion.

### Analysis

Greater Harlem Nursing Home utilization is similar to New York County for 2008, 2009, and 2010 as shown in the table below:

| <i>RHCF Occupancy</i>       | <i>2008</i> | <i>2009</i> | <i>2010</i> |
|-----------------------------|-------------|-------------|-------------|
| Greater Harlem Nursing Home | 96.9%       | 96.1%       | 96.1%       |
| New York County             | 96.9%       | 96.7%       | 96.5%       |
| New York City Region        | 94.5%       | 95.0%       | 94.8%       |

The facility's occupancy is above the region's average each year under consideration but did not surpass the 97% planning optimum for 2009 or 2010. As indicated below in the table below, the project 2016 bed need for the New York Region is 7,649.

| <i>RHCF Bed Need</i>    | <i>New York City</i> |
|-------------------------|----------------------|
| 2016 Projected Need     | 51,071               |
| Current Beds            | 43,343               |
| Beds Under Construction | 79                   |
| Total Resources         | 43,422               |
| Unmet Need              | 7,649                |

Greater Harlem Nursing Home has 8 Physical A's and 1 Physical B.

### Conclusion

There will be a decertification of 25 residential health care beds and an addition of 30 assisted living beds, which will allow Greater Harlem Nursing Home to treat its patients in the appropriate care setting and to operate at optimal capacity.

### Recommendation

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

## Programmatic Analysis

### Facility Information

|                              | <i>Existing</i>  | <i>Proposed</i> |
|------------------------------|--|-----------------|
| <i>Facility Name</i>         | Greater Harlem Nursing Home Company, Inc.              | Same            |
| <i>Address</i>               | 30 West 138 <sup>th</sup> Street<br>New York, NY 10037 | Same            |
| <i>RHCF Capacity</i>         | 200  | 175             |
| <i>ADHC Program Capacity</i> | N/A  | N/A             |

|                          |   |      |
|--------------------------|---|------|
| <i>Type of Operator</i>  | Corporate                                 | Same |
| <i>Class of Operator</i> | Voluntary                                 | Same |
| <i>Operator</i>          | Greater Harlem Nursing Home Company, Inc. | Same |

#### Program Review

Greater Harlem Nursing Home Company, Inc. (GHNHC) is a 200 bed nursing home located in the Harlem Community of Northern Manhattan in New York City. GHNHC is the recipient of a HEAL 12 Grant in support of its rightsizing proposal to reduce the bed complement from 200 to 175 SNF beds and develop of a 30 bed Assisted Living Program (ALP). Previously, as approved under project 101082, GHNHC proposed to construct an addition which would expand the square footage on all floors in order to bring the facility up to current environmental, accessibility and safety standards. Under the original plan the 30 ALP beds were to be located on the sixth floor and share the mechanical, electrical, plumbing and fire protection infrastructure with the nursing home. However, due to the inability of the applicant to obtain timely financing, GHNHC has elected to downsize the project to a level which can be entirely supported by the \$25 million HEAL grant.

Under the amended proposal the ALP/adult home will be located in a freestanding six story building constructed on the site of an adjacent parking lot, which will be purchased by GHNHC. The new building will connect with the existing nursing home structure, and certain administrative offices for the nursing home will be located in the new building. The five nursing units will remain on the second through sixth floors, but beds will be decertified on each floor resulting in nursing units which range from 34 to 36 beds. The renovation of the nursing units will be substantially curtailed, with essential upgrades to the infrastructure contained in the original project, including the installation of a mandated sprinkler system, to be addressed through a companion limited review application.

#### Physical Environment

The revised construction plan for the nursing home, with the scope deleted from the earlier project noted, is outlined below.

##### Basement

No renovations to this area; the barber and beauty salon will be relocated to the first floor. The replacement of the outmoded kitchen equipment to support the implementation of a resident-centered food service delivery system is deleted.

##### First Floor

Renovation to the first floor will be mainly confined to the renovation and expansion of the physical therapy suite. The adjoining men's bathroom will be converted to a handicapped accessible toilet. The barber and beauty salon will be relocated to the area of the current administrator and assistant administrator offices. The adjoining recreation and activities room will be expanded to create a more inviting space. A new admissions office and waiting area will be located in the area surrounding the relocated barber and beauty salon. The creation of a "Great Room" which would open onto a renovated outdoor terrace is deleted.

##### Second – Sixth Floors

Under the revised plan the sixth floor remains as a nursing home floor. The second and third floors will consist of 34 beds arrayed in 6 singles and 14 double bedrooms; the fourth floor will consist of 35 beds arrayed in 5 singles and 15 double bedrooms; and the fifth and sixth floors will consist of 36 beds arrayed in 4 singles and 16 double bedrooms. The revised plan will renovate and expand the existing on-floor dining areas to enable single shift dining for all residents. A new lounge will be constructed adjacent to the dining area to provide needed recreation space. The existing tub room on each floor will be completely renovated to create an appealing spa-type bathing area, and a new shower area will be constructed on the opposite end of the floor adjacent to the new adult home building.

A connection into the new adult home building will be available from the second and fifth floors. Administrative offices currently on the first floor of the nursing home will be located to the second floor of the new building, including administrator, assistant administrator and finance, as well as additional training and conference rooms.



The following components are deleted from the scope of the earlier project:

- Refurbished fully handicapped accessible resident rooms which include individual showers;
- Multiple lounge and dining areas;
- “Country Kitchen” style food service program.

### Conclusion

The reduced renovation project will provide more recreation and dining space on the nursing units, and the bathing rooms will undergo significant improvement. However, the elimination of the upgrades planned for the nursing home in the original HEAL 12 project will result in a less appealing living environment. Code related issues, significantly the lack of handicapped accessible resident rooms, and the aging kitchen and food service delivery system will require attention in the near future. A contingency to approval will be required for the submission of a subsequent project to address all Code-related issues at the nursing home.

The relocation of administrative offices into generously-sized areas in the new ALP building will not improve the residential living environment, and should be re-examined in the final design. The conversion of double bedrooms to singles should include the limited renovations necessary to create handicapped accessible toilet rooms. The applicant is encouraged to re-allocate the double bed conversions to equalize the number of beds on all floors. The end result would be the availability of one single bedroom with a handicapped accessible toilet room on each nursing unit.

In the interim several minor renovations should be undertaken to increase the number of handicapped toilets in the nursing home:

- A handicapped accessible toilet must be located adjacent to the expanded physical therapy area; the renovation of the existing men’s bathroom will satisfy this requirement;
- A handicapped accessible toilet must be located adjacent to, or in close proximity to, the resident dining room on each floor.

### Recommendation

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

## Financial Analysis

### Total Project Cost and Financing

Total project costs are estimated at \$5,358,349 broken down as follows:

|                               |               |
|-------------------------------|---------------|
| Land Acquisition              | \$299,453     |
| New Construction              | 356,000       |
| Renovation & Demolition       | 1,865,295     |
| Temporary Utilities           | 12,000        |
| Asbestos Abatement or Removal | 39,000        |
| Architect/Engineering Fees    | 1,179,755     |
| Construction Manager Fees     | 322,000       |
| Consultant Fees               | 898,547       |
| Movable Equipment             | 305,000       |
| Telecommunications            | 50,000        |
| CON Application Fee           | 2,000         |
| Additional Processing Fee     | <u>29,299</u> |
| Total Project Cost            | \$5,358,349   |

Project cost is based on an October 1, 2012 construction start date and a seventeen month construction period and will be fully financed with HEAL NY – Phase 12.

Capability and Feasibility

The applicant will finance total project costs of \$5,358,349 with a portion of their HEAL-NY phase 12 award of \$25,000,000. The remaining \$19,641,651 HEAL– NY phase 12 award will be used to finance the construction of the ALP. As shown on BFA Attachment A, Greater Harlem Nursing Company, Inc. has experienced negative working capital, negative net asset position while experiencing operating losses of \$2,748,131 and \$876,450 for 2010 and 2011, respectively. The losses have improved over the last three years due to the following initiatives:

- A management company was hired to review the systems within various departments to improve communications.
- Training of admissions, nursing and rehabilitation staff to ensure effective communication amongst the departments so that all services rendered were appropriately and accurately recorded.
- Review of accounts receivable to identify problem areas and ensure timely submission of Medicaid applications.
- Reduction in expenses by reviewing all current contracts to ensure that pricing was consistent with industry standards, and putting certain contracts out to bid to ensure more competitive pricing was obtained
- Cutting back on non-essential staff. Consultants and excess administrative staff positions were eliminated.

Results of these initiatives include new purchasing agreements which will result in a savings of \$25,000 and retirements, resignations and terminations of positions that will not be filled will result in a savings of \$225,000. As of April 30, 2012 the facility experienced a loss of \$240,424, which shows a decrease from previous years. 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 | Draft Financial Summary, Greater Harlem Nursing Home, Inc.                         |
| BFA Attachment B | Internal Financial Summary as of April 30, 2012, Greater Harlem Nursing Home, Inc. |

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

**August 9, 2012**

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**Book A**

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

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

**Residential Health Care Facilities Ventilator Bed– Construction** **Exhibit #7**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 071077 C             | North Sea Associates, LLC<br>d/b/a The Hamptons Center for<br>Rehabilitation and Nursing<br>(Suffolk County)<br>Mr. Fensterman – Recusal                     | Disapproval                           |
| 2. | 112096 C             | Nesconset Acquisition, LLC<br>d/b/a Nesconset Center for<br>Nursing<br>and Rehabilitation<br>(Suffolk County)<br>Mr. Fensterman – Abstaining                 | Disapproval                           |
| 3. | 071024 C             | Long Beach Memorial Nursing<br>Home, Inc. d/b/a Komanoff<br>Center for Geriatric and<br>Rehabilitation Medicine<br>(Nassau County)<br>Mr. Fassler - Interest | Disapproval                           |



# Public Health and Health Planning Council

Project # 071077-C

**North Sea Associates, LLC  
d/b/a The Hamptons Center for Rehabilitation and Nursing**

**County: Suffolk (Southampton)  
Purpose: Construction**

**Program: Residential Health Care Facility  
Submitted: April 18, 2007**

## Executive Summary

### Description

North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing (The Hamptons Center), a 280-bed proprietary residential health care facility (RHCF) located at 64 County Road 39, Southampton, requests approval to certify a 22-bed ventilator-dependent service through the conversion of 22 existing RHCF beds.

DOH Recommendation  
Disapproval.

### Need Summary

10 NYCRR Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

Based on descriptions of problems in access to ventilator bed care presented by applicants proposing to add ventilator units in nursing homes in Suffolk County, the PHHPC asked the Department to evaluate the need for ventilator beds in Suffolk County separately from Nassau County, even though section 709.17 states that need shall be calculated for Nassau and Suffolk Counties combined. Noting a provision in section 709.17 which states that estimates of bed need derived from the methodology may be modified based on significant local factors, the Department concludes

that distinctive features of the planning area and the current configuration of services therein warrant consideration of bed need in Suffolk County separately from the combined Nassau-Suffolk planning area. This approach indicated a need for 33 ventilator beds in Suffolk County and the three applications from nursing homes in the county were reviewed on that basis. The three qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

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

As a result of this competitive review, one applicant is being recommended for approval, requesting a total of 20 ventilator beds.

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

State Council Recommendation

**August 9, 2012.**

# Need Analysis

## Background

10 NYCRR Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

Based on descriptions of problems in access to ventilator bed care presented by applicants proposing to add ventilator units in nursing homes in Suffolk County, the PHHPC asked the Department to evaluate the need for ventilator beds in Suffolk County separately from Nassau County, even though section 709.17 states that need shall be calculated for Nassau and Suffolk Counties combined. Noting a provision in section 709.17 which states that estimates of bed need derived from the methodology may be modified based on significant local factors, the Department concludes that distinctive features of the planning area and the current configuration of services therein warrant consideration of bed need in Suffolk County separately from the combined Nassau-Suffolk planning area. This approach indicated a need for 33 ventilator beds in Suffolk County and the three applications from nursing homes in Suffolk County were reviewed on that basis. The key features of the planning area are:

- Suffolk County has an east-west length of 86 miles in a land area of 912 square miles. The county experiences considerable traffic congestion and lacks significant mass transit, which makes travel within this elongated jurisdiction, and to neighboring Nassau County, difficult;
- Suffolk County has a population of 1.5 million, but there are currently only two nursing homes in Suffolk County certified to operate ventilator beds, with a combined total of 48 such beds;
- A total of 114 of Long Island's 162 certified ventilator beds are concentrated in Nassau County, which has a population of 1.3 million in an area of 285 square miles, much smaller than Suffolk County.

These figures show that Suffolk County has 54% of the population of the Nassau-Suffolk planning area but only 42% of its certified ventilator beds; and that these beds must serve a geographic area nearly 70% larger than Nassau County, which has 46% of the planning area's population but 58% of its certified ventilator beds.

The Department concludes that the geography of Suffolk County and the current uneven distribution of ventilator beds on Long Island are local factors that warrant the consideration of bed need in Suffolk County alone rather than as part of the Nassau-Suffolk planning area. This conclusion is reinforced by discussions between Department staff and administrators of hospitals in Suffolk County, who consistently said that discharge of ventilator-dependent patients to nursing homes in the county was problematic, and who believed that more ventilator beds were needed in nursing homes in the jurisdiction.

As noted, application of the need methodology to Suffolk County indicates a need for 33 additional beds, as shown below:

| <b><i>Total live discharges for DRG (003, 004, and 207)</i></b> |                           |
|---|---------------------------|
| Suffolk County:   | 636 live discharges       |
| Plus 10%:   | 700 discharges            |
| .32 = long-term vent patients:                                  | 224                       |
| ALOS = 125 days:  | 28,000 total patient days |
| Average daily census:   | 77                        |
| Occupancy Rate = .95:   | 81 ventilator beds        |
| Existing and Approved beds:                                     | 48                        |
| <b><i>Remaining Need: 33 beds</i></b>                           |                           |

Source: SPARCS 2009

| <b><i>Suffolk County - Existing Ventilator Beds</i></b> |                  |                        |
|---|------------------|------------------------|
| <i>Facility</i>   | <i>Vent Beds</i> | <i>Occupancy, 2010</i> |
| Medford Multicare Center for Living                     | 20               | 96.3%                  |
| Gurwin Jewish Nursing & Rehab Center                    | 28               | 90.9%                  |
| <i>Total</i>  | 48               |                        |

Source: RHCF Cost Report, 2010

#### Solicitation

In May 2012, Department staff conducted individual conference calls with each of the three Suffolk County applicants. Each applicant was informed of the status of the Department's review and our efforts to further evaluate need on a county specific basis pursuant to direction handed down from PHHPC. Applicants were asked to submit additional information addressing local factors that impact need for the additional vent beds they are proposing.

#### Analysis

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

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

As a result of this competitive review, one applicant is being recommended for approval, requesting a total of 20 ventilator beds.

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

#### Recommendation

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

## Attachments

BHFP Attachment    Map



# Public Health and Health Planning Council

## Project # 112096-C **Nesconset Acquisition, LLC** **d/b/a Nesconset Center for Nursing and Rehabilitation**

**County:** Suffolk (Nesconset)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** August 15, 2011

### Executive Summary

#### Description

Nesconset Acquisition, LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Nesconset Center), a 240-bed proprietary residential health care facility (RHCF) located at 100 Southern Boulevard, Nesconset, requests approval to certify a 20-bed ventilator-dependent service through the conversion of 20 RHCF beds. The 20-bed vent unit would consist of 10 adult and 10 pediatric ventilator-dependent beds.

DOH Recommendation  
Disapproval.

#### Need Summary

10 NYCRR Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

Based on descriptions of problems in access to ventilator bed care presented by applicants proposing to add ventilator units in nursing homes in Suffolk County, the PHHPC asked the Department to evaluate the need for ventilator beds in Suffolk County separately from Nassau County, even though section 709.17 states that need shall be calculated for Nassau and Suffolk Counties combined. Noting a provision in section 709.17 which states that estimates of bed need derived from the methodology may be modified based on significant local factors, the Department concludes

that distinctive features of the planning area and the current configuration of services therein warrant consideration of bed need in Suffolk County separately from the combined Nassau-Suffolk planning area. This approach indicated a need for 33 ventilator beds in Suffolk County and the three applications from nursing homes in the county were reviewed on that basis. The three qualifying applications were ultimately reviewed competitively on criteria that included, but were not limited to:

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

As a result of this competitive review, one applicant is being recommended for approval, requesting a total of 20 ventilator beds.

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



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

State Council Recommendation

**August 9, 2012.**

# Need Analysis

## Background

10 NYCRR Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

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- Suffolk County has an east-west length of 86 miles in a land area of 912 square miles. The county experiences considerable traffic congestion and lacks significant mass transit, which makes travel within this elongated jurisdiction, and to neighboring Nassau County, difficult;
- Suffolk County has a population of 1.5 million, but there are currently only two nursing homes in Suffolk County certified to operate ventilator beds, with a combined total of 48 such beds;
- A total of 114 of Long Island's 162 certified ventilator beds are concentrated in Nassau County, which has a population of 1.3 million in an area of 285 square miles, much smaller than Suffolk County.

These figures show that Suffolk County has 54% of the population of the Nassau-Suffolk planning area but only 42% of its certified ventilator beds; and that these beds must serve a geographic area nearly 70% larger than Nassau County, which has 46% of the planning area's population but 58% of its certified ventilator beds.

The Department concludes that the geography of Suffolk County and the current uneven distribution of ventilator beds on Long Island are local factors that warrant the consideration of bed need in Suffolk County alone rather than as part of the Nassau-Suffolk planning area. This conclusion is reinforced by discussions between Department staff and administrators of hospitals in Suffolk County, who consistently said that discharge of ventilator-dependent patients to nursing homes in the county was problematic, and who believed that more ventilator beds were needed in nursing homes in the jurisdiction.

As noted, application of the need methodology to Suffolk County indicates a need for 33 additional beds, as shown below:

| <b><i>Total live discharges for DRG (003, 004, and 207)</i></b> |                           |
|---|---------------------------|
| Suffolk County:   | 636 live discharges       |
| Plus 10%:   | 700 discharges            |
| .32 = long-term vent patients:                                  | 224                       |
| ALOS = 125 days:  | 28,000 total patient days |
| Average daily census:   | 77                        |
| Occupancy Rate = .95:   | 81 ventilator beds        |
| Existing and Approved beds:                                     | 48                        |
| <b><i>Remaining Need: 33 beds</i></b>                           |                           |

Source: SPARCS 2009

| <b><u>Suffolk County - Existing Ventilator Beds</u></b> |                  |                        |
|---|------------------|------------------------|
| <u>Facility</u>   | <u>Vent Beds</u> | <u>Occupancy, 2010</u> |
| Medford Multicare Center for Living                     | 20               | 96.3%                  |
| Gurwin Jewish Nursing & Rehab Center                    | 28               | 90.9%                  |
| <i>Total</i>  | 48               |                        |

*Source: RHCF Cost Report, 2010*

#### Solicitation

In May 2012, Department staff conducted individual conference calls with each of the three Suffolk County applicants. Each applicant was informed of the status of the Department's review and our efforts to further evaluate need on a county specific basis pursuant to direction handed down from PHHPC. Applicants were asked to submit additional information addressing local factors that impact need for the additional vent beds they are proposing.

#### Analysis

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

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

As a result of this competitive review, one applicant is being recommended for approval, requesting a total of 20 ventilator beds.

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

#### Recommendation

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

## Attachments

BHFP Attachment    Map



# Public Health and Health Planning Council

Project # 071024-C

## Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric and Rehabilitative Medicine

**County:** Nassau (Long Beach)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** February 16, 2007

### Executive Summary

#### Description

Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric Rehabilitative Medicine (Komanoff Center), an existing 200-bed not-for-profit hospital-based residential health care facility (RHCF) located at 375 East Bay Drive, Long Beach, requests approval to certify a 10-bed ventilator-dependent service through the conversion of 10 existing RHCF beds.

DOH Recommendation  
Disapproval.

#### Need Summary

10 NYCRR Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

Based on descriptions of problems in access to ventilator bed care presented by applicants proposing to add ventilator units in nursing homes in Suffolk County, the PHHPC asked the Department to evaluate the need for ventilator beds in Suffolk County separately from Nassau County, even though section 709.17 states that need shall be calculated for Nassau and Suffolk Counties combined. Noting a provision in section 709.17 which states that estimates of bed need derived from the methodology may be modified based

on significant local factors, the Department concludes that distinctive features of the planning area and the current configuration of services therein warrant consideration of bed need in Suffolk County separately from the combined Nassau-Suffolk planning area. This approach also implies a corresponding analysis of the need for ventilator beds in Nassau County separate from the combined two-county planning area. This analysis indicates an excess of 33 beds in Nassau County.

Based on the ventilator bed need methodology in 10 NYCRR Section 709.17, the Department finds that no public need for additional ventilator beds currently exists in Nassau County.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Disapproval.**

State Council Recommendation

**August 9, 2012.**

## Need Analysis

### Background

Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric and Rehabilitation Medicine (Komanoff Center) is located at 375 East Bay Drive, Long Beach, Nassau County. The bed request for this application is tabulated below:

| <b><u>Requested Bed Capacity Change</u></b> |                 |                  |                |
|---|-----------------|------------------|----------------|
| <u>Service</u>                              | <u>Existing</u> | <u>Requested</u> | <u>Revised</u> |
| RHCF  | 200             | -10              | 190            |
| Ventilator                                  | <u>0</u>        | <u>+10</u>       | <u>10</u>      |
| Total                                       | 200             | 0                | 200            |

Komanoff Center's occupancy rates for 2009 and 2010 were as follows:

| <b><u>Occupancy Rate</u></b> |                  |             |             |
|------------------------------|------------------|-------------|-------------|
| <u>Service</u>               | <u>RHCF Beds</u> | <u>2009</u> | <u>2010</u> |
| RHCF                         | 200              | 90.9%       | 87.1%       |

*SOURCE: RHCF Cost Reports*

### 709.17-Need for Long-Term Ventilator Beds

Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk Counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

Based on descriptions of problems in access to ventilator bed care presented by applicants proposing to add ventilator units in nursing homes in Suffolk County, the PHHPC asked if the Department could evaluate the need for ventilator beds in Suffolk County separately from Nassau County, even though Section 709.17 states that need shall be calculated for Nassau and Suffolk Counties combined. Noting a provision in Section 709.17 which states that estimates of need derived from the methodology may be modified based on significant local factors, the Department concludes that distinctive features of the planning area and the current configuration of services therein warrant consideration of bed need in Suffolk County separately from the combined Nassau-Suffolk planning area. These factors are the larger land area of Suffolk County compared to Nassau County, together with the higher concentration of certified ventilator beds in Nassau County for a population slightly smaller than that of Suffolk County. This approach indicated a need for 33 ventilator beds in Suffolk County.

The corollary to this separate analysis of ventilator bed need in Suffolk County is a corresponding separate analysis of bed need in Nassau County. Application of the ventilator bed need methodology to Nassau County separately from the combined Nassau-Suffolk planning area shows an excess supply of 33 certified ventilator beds in the county.

| <b><u>Total live discharges for DRG (003, 004, and 207)</u></b> |                           |
|---|---------------------------|
| Nassau County:  | 635 live discharges       |
| Plus 10%:   | 699 discharges            |
| .32 = long-term vent patients:                                  | 224                       |
| ALOS = 125 days:  | 28,000 total patient days |
| Average daily census:   | 77                        |
| Occupancy Rate = .95:   | 81 ventilator beds        |
| Existing and Approved beds:                                     | 114                       |
| <b><i>Remaining Need: - 33</i></b>                              |                           |

*Source: SPARCS 2009*

| <b><i>Nassau County-Existing Ventilator Beds</i></b> |                  |                        |
|--|------------------|------------------------|
| <u>Facility</u>                                      | <u>Vent Beds</u> | <u>Occupancy, 2010</u> |
| South Shore Healthcare                               | 24               | 26.2                   |
| Meadowbrook Care Center                              | 10               | 69.2                   |
| A. Holly Patterson Extended Care                     | 20               | 93.2                   |
| Woodmere Rehab & Health Care                         | 16               | 99.5                   |
| Townhouse Center for Rehab & Nursing                 | 20               | 98.8                   |
| Cold Spring Hills Center <sup>1</sup>                | 24               | --                     |
| <i>Total</i>   | <i>114</i>       |                        |

<sup>1</sup> Cold Spring Hills Center opened a 24 bed ventilator unit in February, 2011.

Source: RHCFCost Report, 2010.

#### Solicitation

In May 2012, Department staff conducted individual conference calls with each of the applicants for ventilator beds from Nassau and Suffolk counties. Each applicant was informed of the status of the Department's review and of our efforts to further evaluate need on a county-specific basis pursuant to direction handed down from the PHHPC. Applicants were asked to submit additional information addressing local factors that would affect need for the additional ventilator beds they were proposing.

The applicant did not provide adequate data that demonstrates that local factors in the planning area necessitate the approval of additional long-term ventilator care beds.

There is no health systems agency (HSA) for this planning area.

#### Recommendation

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

## Attachments

BHFP Attachment    Map

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

**August 9, 2012**

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**Book A**

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

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

**Residential Health Care Facility Ventilator Bed– Construction**

**Exhibit #8**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C. Recommendation</u></b> |
|----|----------------------|--|---------------------------------------|
| 1. | 072112 C             | Oakwood Operating Co., LLC<br>d/b/a Affinity Skilled Living and<br>Rehabilitation Center (Suffolk<br>County) | Contingent Approval                   |





# Public Health and Health Planning Council

Project # 072112-C  
**Oakwood Operating Co., LLC**  
**d/b/a Affinity Skilled Living and Rehabilitation Center**

**County:** Suffolk (Oakdale)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** October 16, 2007

## Executive Summary

### Description

Oakwood Operating Co., LLC d/b/a Affinity Skilled Living and Rehabilitation Center (Affinity), a 280-bed residential health care facility (RHCF) located at 305 Locust Avenue, Oakdale, requests approval to certify a 20-bed ventilator-dependent service through the conversion of 20 existing RHCF beds.

Total project costs are estimated at \$1,462,695.

DOH Recommendation  
Contingent approval.

### Need Summary

10 NYCRR Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

Based on descriptions of problems in access to ventilator bed care presented by applicants proposing to add ventilator units in nursing homes in Suffolk County, the PHHPC asked the Department to evaluate the need for ventilator beds in Suffolk County separately from Nassau County, even though section 709.17 states that need shall be calculated for Nassau and Suffolk Counties combined. Noting a provision in section 709.17 which states that estimates of bed need derived from the methodology may be modified based on significant local factors, the Department concludes that distinctive features of the planning area and the current configuration of services therein warrant consideration of bed need in Suffolk County separately from the combined Nassau-Suffolk planning area. This approach indicated a need for 33 ventilator beds in Suffolk County and the three applications from nursing homes in the county were reviewed on that basis.

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

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

As a result of this competitive review, one applicant is being recommended for approval, requesting a total of 20 ventilator beds.

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

### Program Summary

This is a 280-bed facility with a satisfactory surveillance history. Affinity has piped oxygen, medical air and suction to all resident beds proposed for vent bed certification at the facility. Transfer agreements are in place with Brookhaven and Southside hospitals. The owners of Affinity also own RHCFs that provide vent bed services and will access staff experienced in working with vent-dependent residents to assist Affinity with start up. The applicant also has experience designing and operating step-down units and weaning programs.

Finance Summary

Project costs will be met via equity of \$365,675 and equipment/renovation lease of \$1,097,020 (5 yrs. @ 5.7%).

|                     |                     |                  |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 3,953,232     |
|                     | <i>Expenses:</i>    | <u>3,521,663</u> |
|                     | <i>Gain/(Loss):</i> | \$ 431,569       |

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.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

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

Council Action Date

**August 9, 2012.**

# Need Analysis

## Background

10 NYCRR Section 709.17 states that the planning areas for determining the public need for long-term ventilator beds on Long Island shall be the combined areas of Nassau and Suffolk counties. Estimates of ventilator bed need are therefore to be calculated based on the application of the need factors set forth in the 709.17 methodology to the two counties as a whole. This calculation results in a finding of a current lack of need for additional ventilator beds in the Nassau-Suffolk planning area.

Based on descriptions of problems in access to ventilator bed care presented by applicants proposing to add ventilator units in nursing homes in Suffolk County, the PHHPC asked the Department to evaluate the need for ventilator beds in Suffolk County separately from Nassau County, even though section 709.17 states that need shall be calculated for Nassau and Suffolk Counties combined. Noting a provision in section 709.17 which states that estimates of bed need derived from the methodology may be modified based on significant local factors, the Department concludes that distinctive features of the planning area and the current configuration of services therein warrant consideration of bed need in Suffolk County separately from the combined Nassau-Suffolk planning area. This approach indicated a need for 33 ventilator beds in Suffolk County and the three applications from nursing homes in Suffolk County were reviewed on that basis. The key features of the planning area are:

- Suffolk County has an east-west length of 86 miles in a land area of 912 square miles. The county experiences considerable traffic congestion and lacks significant mass transit, which makes travel within this elongated jurisdiction, and to neighboring Nassau County, difficult;
- Suffolk County has a population of 1.5 million, but there are currently only two nursing homes in Suffolk County certified to operate ventilator beds, with a combined total of 48 such beds;
- A total of 114 of Long Island's 162 certified ventilator beds are concentrated in Nassau County, which has a population of 1.3 million in an area of 285 square miles, much smaller than Suffolk County.

These figures show that Suffolk County has 54% of the population of the Nassau-Suffolk planning area but only 42% of its certified ventilator beds; and that these beds must serve a geographic area nearly 70% larger than Nassau County, which has 46% of the planning area's population but 58% of its certified ventilator beds.

The Department concludes that the geography of Suffolk County and the current uneven distribution of ventilator beds on Long Island are local factors that warrant the consideration of bed need in Suffolk County alone rather than as part of the Nassau-Suffolk planning area. This conclusion is reinforced by discussions between Department staff and administrators of hospitals in Suffolk County, who consistently said that discharge of ventilator-dependent patients to nursing homes in the county was problematic, and who believed that more ventilator beds were needed in nursing homes in the jurisdiction.

Application of the need methodology to Suffolk County indicates a need for 33 additional beds, as shown below:

| <b><i>Total live discharges for DRG (003, 004, and 207)</i></b> |                           |
|---|---------------------------|
| Suffolk County:   | 636 live discharges       |
| Plus 10%:   | 700 discharges            |
| .32 = long-term vent patients:                                  | 224                       |
| ALOS = 125 days:  | 28,000 total patient days |
| Average daily census:   | 77                        |
| Occupancy Rate = .95:   | 81 ventilator beds        |
| Existing and Approved beds:                                     | 48                        |
| <b><i>Remaining Need: 33 beds</i></b>                           |                           |

Source: SPARCS 2009

| <b><i>Suffolk County - Existing Ventilator Beds</i></b> |                  |                        |
|---|------------------|------------------------|
| <i>Facility</i>   | <i>Vent Beds</i> | <i>Occupancy, 2010</i> |
| Medford Multicare Center for Living                     | 20               | 96.3%                  |
| Gurwin Jewish Nursing & Rehab Center                    | 28               | 90.9%                  |
| <i>Total</i>  | 48               |                        |

Source: RHCFCost Report, 2010

#### Solicitation

In May 2012, Department staff conducted individual conference calls with each of the three Suffolk County applicants. Each applicant was informed of the status of the Department's review and our efforts to further evaluate need on a county specific basis pursuant to direction handed down from PHHPC. Applicants were asked to submit additional information addressing local factors that would affect need for the additional vent beds they are proposing.

#### Analysis

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

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

As a result of this competitive review, one applicant is being recommended for approval, requesting a total of 20 ventilator beds.

This CON application addressed the review criteria well enough to merit being awarded ventilator beds and is, therefore, recommended for approval.

#### Recommendation

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

## Programmatic Analysis

#### Facility Information

|                          | <i>Existing</i>                                   | <i>Proposed</i>                                |
|--------------------------|---|--|
| <i>Facility Name</i>     | Affinity Skilled Living and Rehabilitation Center | Same   |
| <i>Address</i>           | 305 Locust Avenue<br>Oakdale, NY 11769            | Same   |
| <i>RHCFCapacity</i>      | 280 RHCFC beds                                    | 260 RHCFC beds<br>20 Ventilator Dependent Beds |
| <i>Type of Operator</i>  | Limited Liability Company                         | Same   |
| <i>Class of Operator</i> | Proprietary                                       | Same   |
| <i>Operator</i>          | Oakwood Operating Co., LLC                        | Same   |

Character and Competence

This 280-bed facility located in the densely populated southwest region of Suffolk County has consistently shown a satisfactory surveillance history. Affinity provides piped oxygen, medical air and suction to all resident beds proposed for vent bed certification facility. Transfer agreements are in place with Brookhaven and Southside hospitals. The owners of Affinity also own RHCs that provide vent bed services and will access staff experienced in working with vent-dependent residents to assist with start up. The applicant has experience designing and operating step down units and weaning programs. The owners of Affinity also have experience designing and managing comprehensive programs to reduce rehospitalization of vent bed residents.

The 20 bed vent unit will be located in the northeast corner of the first floor with the opposite wing of the same nursing unit assigned as the respiratory care step down unit. The vent beds will be located in 4 single bedded rooms and 8 double bedded rooms, meeting the 20% single-bedded rooms criteria.

Affinity will meet staffing requirements for the vent unit, and will provide 24 hour 7 day a week respiratory therapy coverage.

Recommendation

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

**Financial Analysis**

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at \$1,462,695, broken down as follows:

|                            |              |
|----------------------------|--------------|
| Renovation and Demolition  | \$420,000    |
| Design Contingency         | 42,000       |
| Construction Contingency   | 42,000       |
| Fixed Equipment            | 420,000      |
| Architect/Engineering Fees | 113,400      |
| Other Fees (Consultant)    | 89,250       |
| Moveable Equipment         | 210,000      |
| Telecommunications         | 27,563       |
| Financing Costs            | 55,165       |
| Interim Interest Expense   | 34,073       |
| CON Fee                    | 1,250        |
| Additional Processing Fee  | <u>7,994</u> |
| Total Project Cost         | \$1,462,695  |

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   | \$365,675 |
| Equipment/Renovation Lease<br>(5.70% interest rate for a five year term) | 1,097,020 |

Operating Budget

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

Year One                      Year Three

|                             |                |                |
|-----------------------------|----------------|----------------|
| Revenues                    | \$3,745,223    | \$3,953,232    |
| Expenses:                   |                |                |
| Operating                   | \$3,251,388    | \$3,222,470    |
| Capital                     | <u>299,193</u> | <u>299,193</u> |
| Total Expenses              | \$3,550,581    | \$3,521,663    |
| Net Income                  | \$194,642      | \$431,569      |
| Utilization: (patient days) | 6,570          | 6,935          |
| Occupancy                   | 90.00%         | 95.00%         |
| Cost Per Patient Day        | \$540.42       | \$507.81       |

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

- The case management index is 1.14.
- Medicaid, Medicare and Private Pay rates are based on reimbursement methodologies for ventilator dependent services.

Utilization by payor source during the first and third years for the 20 ventilator dependent beds is as follows:

|             | <u>Year One</u> | <u>Year Three</u> |
|-------------|-----------------|-------------------|
| Medicaid    | 84.99%          | 84.99%            |
| Medicare    | 5.01%           | 5.01%             |
| Private Pay | 10.00%          | 10.01%            |

Expense and utilization assumptions are based on the current data from the facility, adjusted for the projected changes for the costs associated within the vent beds.

#### Capability and Feasibility

The applicant will finance \$1,097,020 via an equipment/renovation lease at an interest rate of 5.70% for a five year term. The remainder, \$365,675, will be provided as equity from the members of Affinity Skilled Living and Rehabilitation Center. Presented as BFA Attachment A is the personal net worth statement of the members of Affinity Skilled Living and Rehabilitation Center, indicating the availability of sufficient funds for the equity contribution.

The submitted budget projects a net income of \$194,642 and \$431,569 during the first and third years, respectively. Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time it cannot be determined what financial impact this change in reimbursement methodology will have on this project. The budget appears reasonable. Revenues are based on current reimbursement methodologies for ventilator dependent services.

Presented as BFA Attachment B is a financial summary of Affinity Skilled Living and Rehabilitation Center. As shown on Attachment B, the facility had an average negative working capital position and an average positive net asset position during the period shown. Also, the facility achieved an average net income of \$1,266,915 during the period shown.

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.

## Attachments

- BFA Attachment A    Personal Net Worth Statement of the Members of Affinity Skilled Living and Rehabilitation Center
- BFA Attachment B    Financial Summary of Affinity Skilled Living and Rehabilitation Center
- BHFP Attachment    Map



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

**August 9, 2012**

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**Book A**

**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 #9**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 111142 B             | Stoneleigh Avenue Pain<br>Management ASC, LLC<br>(Putnam County)          | Contingent Approval                       |
| 2. | 121353 E             | Crystal Run Ambulatory<br>Surgery Center of Middletown<br>(Orange County) | Contingent Approval                       |

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

**Exhibit #10**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>                      | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 121340 E             | Metro Community Health<br>Center<br>(New York County) | Contingent Approval                       |

**Residential Health Care Facilities – Establish**

**Exhibit 11**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 121103 E             | HRNC Operating, LLC d/b/a<br>Highland Rehabilitation and<br>Nursing Center<br>(Orange County) | Contingent Approval                       |

|    |          |  |                     |
|----|----------|--|---------------------|
| 2. | 121168 E | Oak Hollow NC Corp. d/b/a<br>Oak Hollow Nursing Center<br>(Suffolk County)                                   | Contingent Approval |
| 3. | 121174 E | Crest Hall Corp. d/b/a Lakeview<br>Rehabilitation and Care Center<br>(Suffolk County)                        | Contingent Approval |
| 4. | 121175 E | Crown Nursing Home<br>Associates, Inc.<br>d/b/a Crown Nursing and<br>Rehabilitation Center<br>(Kings County) | Contingent Approval |

**Restated Certificate of Incorporation**

**Exhibit #12**

**Applicant**

**E.P.R.C.  
Recommendation**

- |    |   |          |
|----|---|----------|
| 1. | The Methodist Homes For The Aging of the Wyoming<br>Conference in the State of New York | Approval |
|----|---|----------|

**Certificate of Dissolutions**

**Exhibit #13**

**Applicant**

**E.P.R.C.  
Recommendation**

- |    |                                   |          |
|----|-----------------------------------|----------|
| 1. | The Falck Foundation, Inc.        | Approval |
| 2. | St. Clare Manor of Lockport, N.Y. | Approval |
| 3. | St. Joseph's Manor of Olean, N.Y. | Approval |
| 4. | St. Luke Manor of Batavia. N.Y.   | Approval |
| 5. | St. Mary's Manor                  | Approval |



# Public Health and Health Planning Council

## Project # 111142-B Stoneleigh Avenue Pain Management ASC, LLC

**County:** Putnam (Carmel)

**Program:** Ambulatory Surgery Center

**Purpose:** Establishment and Construction

**Submitted:** January 27, 2011

### Executive Summary

#### Description

Stoneleigh Avenue Pain Management ASC, LLC, a limited liability company, requests approval to establish and construct a diagnostic and treatment center certified as a single specialty freestanding ambulatory surgery center (FASC), to specialize in pain management services. The FASC will be located in renovated space in an existing building on the Putnam Hospital Center Campus, located at located 670 Stoneleigh Avenue, Carmel, which is currently being leased by a private physician practice. Putnam Hospital Center is currently the sole member of Stoneleigh Avenue Pain Management ASC, LLC, and will enter a joint venture with Douglas Fauser, MD., and Joel Buchalter, MD., to form Stoneleigh Avenue Pain Management ASC, LLC.

The ownership of Stoneleigh Avenue Pain Management is as follows:

|                        |       |
|------------------------|-------|
| Putnam Hospital Center | 49.0% |
| Douglas Fauser, MD.    | 25.5% |
| Joel Buchalter, MD.    | 25.5% |

Putnam Hospital Center is an existing 164-bed not-for-profit hospital that is the sole provider of acute care services in Putnam County. The applicant will have a transfer and affiliation agreement with Putnam Hospital Center.

Total project costs are estimated at \$1,967,416.

DOH Recommendation  
Contingent approval.

#### Need Summary

Stoneleigh Avenue Pain Management ASC, LLC projects that there will be 1,400 visits in year one and 2,600 in year three.

#### 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 from accumulated funds from the proposed members of Stoneleigh Avenue Pain Management, LLC.

|         |              |                  |
|---------|--------------|------------------|
| Budget: | Revenues:    | \$ 4,176,019     |
|         | Expenses:    | <u>3,190,470</u> |
|         | Gain/(Loss): | \$ 985,549       |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of executed sublease agreements that is acceptable to the Department. [BFA]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Stoneleigh Pain Management ASC, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Operating Agreement of Stoneleigh Pain Management ASC, LLC, acceptable to the Department. [CSL]
7. Submission of an explanation of the role, if any, of Somers Support Services, LLC with respect to the operation of facility, acceptable to the Department. [CSL]
8. Submission of an explanation of the role, if any, of Somers Orthopedic Surgery and Sports Medicine, PLLC with respect to the operation of facility, acceptable to the Department. [CSL]
9. Submission of an explanation of the role, if any, of Health Quest Systems, Inc. with respect to the operation of facility, 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, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by March 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

Putnam Hospital Center (PHC) is a 164-bed acute care hospital located at 670 Stoneleigh Avenue, Carmel, 10512, in Putnam County. The hospital seeks approval to establish Stoneleigh Avenue Pain Management ASC, LLC as a pain management services Article 28 Diagnostic and Treatment Center.

Stoneleigh Avenue Pain Management ASC, LLC will offer Ambulatory Surgery Pain Management services.

Putnam Hospital Center (PHC) is a member of the Health Quest System and the sole community provider of acute care services in Putnam County. PHC proposes to establish Stoneleigh Avenue Pain Management ASC for the following reasons:

- A. to enter into a joint venture with Dr. Douglas Fauser and Dr. Joel Buchalter (In the venture PHC will own 49% and the doctors will collectively own 51%. Any new physicians entering into the partnership will hold a portion of the 51% share.); and
- B. to construct and operate a pain management suite of the same name, to be located in renovated space in an existing building on PHC's campus.

The applicant indicates that pain management services are currently offered within the surgical suite of the hospital but that the location is not conducive to patient access and limits the number of pain procedures that can be done because the suite at the hospital is near capacity. The redevelopment of the pain management suite will allow the hospital to create a separate and distinct unit outside the operating suite and accomplish the following goals:

- better patient experience;
- enhanced patient satisfaction;
- care in a more appropriate setting;
- more robust pain management service; and
- expansion of service.

The unit will be designed with one pain management treatment room and four exams rooms and allow for 3,000-pain management procedures. The suite will be opened Monday – Friday from 7:00am to 3:30pm.

The new suite will allow the hospital to improve its throughput and improve patient satisfaction. Because of the addition of a second physician and dedicated space, PHC expects its pain management procedures to exceed its prior experience. The hospital anticipates approximately 1,400 procedures in its first year of operation, growing to more than 2,600 procedures by year 3 of operation.

### Recommendation

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

## Programmatic Analysis

### Background

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

|                          |   |
|--------------------------|---|
| <b>Proposed Operator</b> | <b>Stoneleigh Avenue Pain Management ASC, LLC</b> |
| Site Address             | 670 Stoneleigh Avenue, Carmel                     |
| Surgical Specialties     | Pain Management                                   |
| Operating Rooms          | 0   |
| Procedure Rooms          | 1   |
| Hours of Operation       | Monday through Friday from 7:00 am to 5:00 pm     |

|  |   |
|--|---|
| Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)                 | 8.6 FTEs / 10.6 FTEs  |
| Medical Director(s)  | Jason Melnick, MD   |
| Emergency, In-Patient and Backup Support Services Agreement – Distance | Expected to be provided by Putnam Hospital Center<br>Located on the same campus |
| On-call service  | Will be available 24 hours per day 7 days per week.                             |

Character and Competence

The members of the LLC are:

| Name                   |       |
|------------------------|-------|
| Putnam Hospital Center | 49.0% |
| Joel S. Buchalter, MD  | 25.5% |
| Douglas J. Fauser, MD  | 25.5% |

The two individual members are orthopedic surgeons in private practice. Putnam Hospital Center is part of Health Quest Systems, Inc. As such, the board members for both Putnam Hospital and Health Quest were subjected to a character & competence review.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's and relatives' ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management (relative to Medicaid fraud and abuse), the Office of Professional Medical Conduct, and the Education Department databases.

Dr. Mitchell Cohn, a Putnam Hospital board member, disclosed one pending malpractice case. Robert Waegelein, a Putnam Hospital board member and Co-President and CFO of Universal American Corp., disclosed a corporate integrity agreement. The agreement is between Universal American and the Office of the Inspector General of the federal Department of Health and Human Services and resolved a suit related to marketing and sales practices in 2007 through 2009. Universal American also paid a \$4.6 million fine.

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.

Northern Dutchess Hospital, a member of Health Quest Systems, Inc. paid a \$14,000 fine based on the investigation of a 2006 occurrence of wrong-sided lipoma removal resulting from failure to mark surgical site and failure to review CT scan.

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.

Integration with Community Resources

The center plans to work with patients to educate them regarding the availability of local physicians and services. Additionally, the center is committed to becoming a network provider in the provider-led health homes designated by the New York State Department of Health for Putnam County and the surrounding counties in Phase II of the health home implementation and will consider joining any Accountable Care Organizations Putnam Hospital joins. A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

The center plans to implement the same electronic medical record system currently used by Putnam Hospital as well as investigate the potential for affiliating with the same Regional Health Information Organization as Putnam Hospital.

Recommendation

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

## Financial Analysis

### Sublease Rental Agreement

The applicant provided draft subleases agreement for the site that they will occupy, which is summarized below:

*Premises:* 1,031 sq. ft. located at 664 Stoneleigh Avenue, Carmel, New York  
*Sublessor:* Somers Orthopedic Surgery and Sports Medicine Group, P.L.L.C  
*Sublessee:* Stoneleigh Avenue Pain Management ASC, LLC  
*Term:* Five (5) years with a five (5) year renewal term.  
*Rental:* Year 1 through Year 4- \$22,166.50 (\$21.50 per sq. ft.)  
 Year 5- \$22,831.50 (\$22.15 per sq. ft.) and then a 3% increase each year thereafter.  
*Provisions:* The sublessee shall be responsible for insurance and utilities.

*Premises:* 1,880 sq. ft. located at 664 Stoneleigh Avenue, Carmel, New York  
*Sublessor:* Putnam Hospital Center  
*Sublessee:* Stoneleigh Avenue Pain Management ASC, LLC  
*Term:* Five (5) years with a five (5) year renewal term.  
*Rental:* Year 1 through 10- \$43,066.24 (\$22.90 per sq. ft.)  
*Provisions:* The sublease shall responsible for insurance and utilities.

The applicant has indicated that both subleases are non-arms length lease relationships.

### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,967,416, itemized as follows:

|                            |               |
|----------------------------|---------------|
| Renovation and Demolition  | \$955,750     |
| Construction Contingency   | 95,575        |
| Architect/Engineering Fees | 63,340        |
| Moveable Equipment         | 840,000       |
| CON Fee                    | 2,000         |
| Additional Processing Fee  | <u>10,751</u> |
| Total Project Cost         | \$1,967,416   |

Project costs are based on an October 1, 2012 construction start date and a two months construction period.

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

### Operating Budget

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

|                           | <u>Year One</u>  | <u>Year Three</u> |
|---------------------------|------------------|-------------------|
| Revenues                  | \$3,034,211      | \$4,176,019       |
| Expenses:                 |                  |                   |
| Operating                 | \$2,180,370      | \$2,886,978       |
| Capital                   | <u>286,716</u>   | <u>303,492</u>    |
| Total Expenses            | \$2,467,086      | \$3,190,470       |
| Net Income                | <u>\$567,125</u> | <u>\$985,549</u>  |
| Utilization: (Procedures) | 2,745            | 3,561             |
| Cost Per Procedure        | \$898.76         | \$908.60          |

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

|                         | <u>Year One</u> | <u>Year Three</u> |
|-------------------------|-----------------|-------------------|
| Commercial FFS          | 3.64%           | 3.65%             |
| Commercial Managed Care | 26.38%          | 26.34%            |
| Medicare Managed Care   | 55.00%          | 55.01%            |
| Medicaid Managed Care   | 14.98%          | 15.00%            |

Expense and utilization assumptions are based on the historical experience of Putnam Hospital Center for these procedures.

#### Capability and Feasibility

The applicant will provide equity from the proposed members to meet the project cost of \$1,967,416.

Working capital requirements are estimated at \$531,745, which appears reasonable based on two months of third year expenses. The applicant will provide equity from accumulated funds to meet the working capital requirement. Presented as BFA Attachment A and B are the personal net worth statements for the individual members, and the 2010 and 2011 certified financial statements of Putnam Hospital Center, which indicates the availability of sufficient funds to meet the project cost and the working capital requirement. Presented as BFA Attachment C is the pro-forma balance sheet of Stoneleigh Avenue Pain Management ASC, LLC as of the first day of operation, which indicates a positive net asset position of \$2,499,161 as of the first day of operation.

The submitted budget indicates a projected net income of \$567,125 and \$985,549 during the first and third years, respectively. Revenues are based on current reimbursement rates for ambulatory surgery services.

As shown on Attachment B, Putnam Hospital Center had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the facility achieved an average operating gain of \$8,333,500 from 2010 through 2011.

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

#### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Personal Net Worth Statement of Proposed Individual Members |
| BFA Attachment B | Financial Summary- Putnam Hospital Center                   |
| BFA Attachment C | Pro-forma Balance Sheet                                     |
| BHFP Attachment  | Map   |



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of August, 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 construct and establish a diagnostic and treatment center certified as a single specialty freestanding ambulatory surgery center to specialize in pain management services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

111142 B

Stoneleigh Avenue Pain Management ASC, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Section 2802.7 states that all sponsors whose applications require review by the State Hospital Review and Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
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3. Submission of executed sublease agreements that is acceptable to the Department. [BFA]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of Stoneleigh Pain Management ASC, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed Operating Agreement of Stoneleigh Pain Management ASC, LLC, acceptable to the Department. [CSL]
7. Submission of an explanation of the role, if any, of Somers Support Services, LLC with respect to the operation of facility, acceptable to the Department. [CSL]
8. Submission of an explanation of the role, if any, of Somers Orthopedic Surgery and Sports Medicine, PLLC with respect to the operation of facility, acceptable to the Department. [CSL]
9. Submission of an explanation of the role, if any, of Health Quest Systems, Inc. with respect to the operation of facility, 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, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by March 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842

Albany, New York 12237



# Public Health and Health Planning Council

Project # 121353-E

## Crystal Run Ambulatory Surgery Center of Middletown

**County:** Orange (Middletown)  
**Purpose:** Establishment

**Program:** Ambulatory Surgery Center  
**Submitted:** April 27, 2012

### Executive Summary

#### Description

Crystal Run Ambulatory Surgery Center of Middletown, LLC, an existing limited liability company, was approved as an ambulatory surgery center by the Public Health Council in April 2010. The applicant currently requests approval to transfer ownership interests of thirty-seven (37) new partners into Crystal Run Healthcare, LLP.

The current members of Crystal Run Ambulatory Surgery Center of Middletown, LLC are Crystal Run Healthcare, LLP (60%), comprised of 59 partners, and Orange Regional Medical Center (40%). Upon approval, Crystal Run Healthcare, LLP will have 96 partners, each with 1.0417% membership interest.

The proposed issuance of new membership interests, when combined with issuances over the past two years, would in aggregate exceed 25% within five years, thereby requiring Public Health and Health Planning Council approval. The previous transactions were made with prior notice to the Department in accordance with Public Health Law Section 2801-a(4)(b).

**DOH Recommendation**  
Contingent approval.

#### Need Summary

As this project involves only a minor change in the ownership interests, no Need recommendation is required.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

#### Financial Summary

There are no budgeted incremental operating expenses or revenues associated with this project, since patient care services will not be affected or interrupted.

Purchase price of \$7,400,000 will be met with a \$200,000 promissory note from each of the 37 proposed new partners. To secure repayment of the promissory notes, Crystal Run Healthcare will withhold the amount due from each proposed new partner's semi-monthly partnership distribution.

## 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 partnership agreement from each of the proposed new members that is acceptable to the Department of Health. [BFA]
2. Submission of an executed promissory note from each of the proposed new members that is acceptable to the Department. [BFA]
3. Submission of photocopies of executed Certificates of Partnership, acceptable to the Department. [CSL]

Council Action Date

**August 9, 2012.**

## Programmatic Analysis

### Background

Crystal Run Ambulatory Surgery Center of Middletown is an operational ambulatory surgery center. The members of Crystal Run Ambulatory Surgery Center are Orange Regional Medical Center (40%) and Crystal Run Healthcare, LLP (60%). This proposal is to add 37 new partners (all practicing physicians) in Crystal Run Healthcare, LLP. Upon approval there will be a total of 97 partners, with a 1.04% share of the partnership. There will be no change in the direct membership percentages of the ambulatory surgery center.

### Character and Competence

The partners in Crystal Run Healthcare, LLP are:

#### Proposed Partners (subject of CON)

|                       |                       |
|-----------------------|-----------------------|
| Shawkat Massih        | Ramzi Tawil           |
| Ralph G. Anderson     | Rocco Bassora         |
| Zewditu Bekele-Arcuri | Paul Eugenio          |
| Thomas Booker         | Andrew Faskowitz      |
| Wico Chu              | John Fiorianti        |
| Felix Davelman        | Anousheh Ghezel-Ayagh |
| D'mitri Gorelov       | Aleksandr Guchinskiy  |
| Michael Hoffman       | Geoffrey Hulse        |
| Syed Jafri            | Malloy Nair           |
| Hanna Kim             | Vipul Patel           |
| Liby Mathew           | Riaz Rahman           |
| Jacqueline Todd       | Rob Scoyni            |
| Mirilini Yeddu        | Elizabeth George      |
| Howard Yeon           | Ed Pinto              |
| Alex Gershenhorn      | Pankaj Kaw            |
| Anthony Koehler       | Khawaja Mir           |
| G. Varuni Kondagunta  | Romeo Quilatan        |
| Kristen Mercado       | Lin Lin Remenar       |
| Tapti Panda           |                       |

#### Current Partners (already approved)

|                          |                   |
|--------------------------|-------------------|
| Hal Teitelbaum           | Sally Levine      |
| Dumisa Adams             | Kaiyu Ma          |
| Eric Barbanel            | Jim McLaughlin    |
| Andrew Beharrie          | Robert Menezes Jr |
| Mark Bele                | Jonathan Nasser   |
| James Brouckunier        | Julian Nelson     |
| Rosa Cirillo             | Laura Nicoli      |
| Randolph Cohen           | Manuel Perry      |
| Margaret Coughlin        | Tal Ronen         |
| Edward Croen             | Sharon Rosenberg  |
| Robert dinsmore          | Steven Rowe       |
| Sandy Doti               | Jonathan Rudnick  |
| Jinlin Du                | Tim Rydell        |
| Karen Finnigan           | Sandra Sacks      |
| Lisette Giraud           | Scot Selbo        |
| Noemi Gonzalez-Klayman   | Gary Silverman    |
| William Gotsis           | Sandeep Singh     |
| Steven Grundfast         | Samir Sodha       |
| Scott Hines              | Deborah Spencer   |
| Ali Hmidi                | Gregory Spencer   |
| V. Christopher Inzerillo | Laurence Tawil    |

David Jaeger  
John Juliano  
David Kang  
Robin Karpfen  
Howard Karpoff  
Lezode Kipoliongo  
Michelle Koury  
Stanislaw Landau  
Sophia Lee

Arthur Tolis  
Daniel Tomlinson  
Kevin Trapp  
Alvin Viray  
Robert Walker  
Alicia Weissman  
Sherma Winchester-Penny  
Ilan Zedek

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.

Recommendation

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

## Financial Analysis

Partnership Agreement

The applicant has submitted executed Certificates of Partnership, in which each proposed new partner agrees to the terms and conditions of the Third Amended and Restated Agreement of Partnership. Upon Department approval, each proposed new partner will execute a signature page to the Partnership Agreement and a promissory note for the \$200,000 purchase price per new partner.

Operating Budgets

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

Capability and Feasibility

Purchase price of \$7,400,000 will be met with a \$200,000 promissory note from each new proposed partner. To secure repayment of the promissory notes, Crystal Run Healthcare will withhold the amount due from each new partner's semi-monthly partnership distribution.

CMS has approved Crystal Run Ambulatory Surgery Center as a member of an Accountable Care Organization (ACO). The future payment model has no bearing on this application since the ACO model cannot be projected at this time by the Department or applicant.

Presented as BFA Attachment B, a financial summary for Crystal Run Ambulatory Surgery Center of Middletown, LLC indicates that the facility has experienced average negative working capital, maintained average positive member's equity and generated an average net income of \$9,899 for the period shown. The applicant has indicated the reason for the negative working capital was due to start up in 2010 as a new operator.

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 | Partner Listing and Ownership Interests                                     |
| BFA Attachment B | Financial Summary, Crystal Run Healthcare, LLP                              |
| BFA Attachment C | Internal Financial Summary as of March 31, 2012, Crystal Run Healthcare,LLP |



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 9th day of August, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer ownership interests to 37 new members of Crystal Run Healthcare, LLP, 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:

121353 E

FACILITY/APPLICANT:

Crystal Run Ambulatory Surgery Center  
of Middletown

APPROVAL CONTINGENT UPON:

1. Submission of an executed partnership agreement from each of the proposed new members that is acceptable to the Department of Health. [BFA]
2. Submission of an executed promissory note from each of the proposed new members that is acceptable to the Department. [BFA]
3. Submission of photocopies of executed Certificates of Partnership, 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  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237



# Public Health and Health Planning Council

## Project # 121340-E Metro Community Health Center

**County:** Richmond (Staten Island)  
**Purpose:** Establishment

**Program:** Diagnostic and Treatment Center  
**Submitted:** April 24, 2012

### Executive Summary

#### Description

Metro Community Health Center (Metro Community), a to-be established not-for-profit corporation and Federally-Qualified Health Center (FQHC), requests approval to become the new operator of four diagnostic and treatment centers providing primary medical care and psychology to people with disabilities and chronic health conditions, currently being operated by Cerebral Palsy Associations of New York State (CPA of NYS). The four centers are as follows:

- Koicheff Health Care Center (Staten Island)
- Metro Community Health Center (Bronx)
- Linda Bush Gherardi Community Health Care Center (Brooklyn)
- Queens Health Care Center (Woodside)

Metro Community will create a unique health care service delivery network that will meet the standards of FQHC designation by the U.S. Health Resources Services Administration (HRSA) and an Enhanced Patient Centered Medical Home (PCMH), recognized by the National Committee on Quality Assurance (NCQA) with certified interoperable Health Information Technology. The network is sponsored by and created through collaboration and partnership with CPA of NYS and an affiliation with Urban Health Plan, an FQHC operating in Bronx and Queens.

CPA of NYS has over 60 years of experience as a non-profit service provider of health, rehabilitation, long term care, residential and day habilitation services, vocational services, case management, and a wide range of community support services to individuals of all ages with a variety of disabilities, and to their families.

Urban Health Plan was founded in 1974 as a not-for-profit, Article 28 diagnostic and treatment center and obtained FQHC designation in 1999.

**DOH Recommendation**  
Contingent approval.

#### Need Summary

Metro Community's network will offer primary and specialty services at each site, either directly or through referrals targeting chronic health conditions, including: cardiology, dermatology, endocrinology, gastroenterology, gynecology, neurology, podiatry, pulmonology, physiatry, psychiatry, dental, mental health, occupational and physical therapy, and speech and language pathology services, and lab services.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

CPA of NYS will loan Metro Community \$2,281,000 with a five-year term at an interest rate equal to the prime rate (3.25%, as of 7/10/12), for working capital and start-up costs, which include: equipment balance transfer, legal, accounting and filing fees and cash flow advance. In addition, Metro Community will pay CPA of NYS an annual amount equal to a full year of depreciation, which is approximately \$82,568, until such time that the equipment from all four sites has no remaining net asset value.

|         |              |                  |
|---------|--------------|------------------|
| Budget: | Revenues:    | \$ 9,378,916     |
|         | Expenses:    | <u>8,829,786</u> |
|         | Gain/(Loss): | \$ 549,130       |

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

## 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 Contractor Agreement 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]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

Metro Community Health Center (MCHC) seeks to become the operator of four diagnostic and treatment centers currently operated by Cerebral Palsy Association of New York State. The D&TCs with their assumed names and locations are as follows:

- a) MCHC-Bronx  
979 Cross Bronx Expressway Service Road North  
Bronx, 10460, Bronx County
- b) Linda Buch Gherardi MCHC  
921 East New York Avenue  
Brooklyn, 11203-1309, Kings County
- c) MCHC-Queens  
51-40 59<sup>th</sup> Street  
Woodside, 11377-7415, Queens County
- d) Koicheff MCHC  
2324 Forest Avenue  
Staten Island, 10303-1506, Richmond County

### Analysis

The proposed service area for the four sites is as follows:

#### Bronx Service Area

Zip codes: 10453, 10456-10460, 10462, and 10472.

#### Brooklyn Service Area

Zip codes: 11203, 11205-11208, 11212, 11213, 11216, 11217, 11221, 11225, 11226, 11233, 11237, and 11238.

#### Queens-Woodside Service Area

Zip codes: 11368-11370, 11372, 11373, and 11377

Queens - Jamaica Service area (plans being developed to move back to Jamaica-site search expected to be completed in 2013)

Zip codes: 11420, 11432-11434, 11436, and 11451.

#### Staten Island Service Area

Zip codes: 10301-10303 and 10310.

The target population is people with disabilities and chronic health conditions in the Bronx, Brooklyn, Queens, and Staten Island in the zip codes listed above, which are in close proximity to the health center locations and have received physician shortage designations.

The MCHC-Bronx, Linda Buch Gherardi MCHC-Brooklyn, and Koicheff MCHC-Staten Island sites are co-located with a day habilitation program and other programs operated by the Cerebral Palsy Association of NYS serving people with developmental disabilities and disabilities with similar service needs.

The number of projected visits for each site is as follows:

| <u>Projected Visits</u> | <u>Bronx</u> | <u>Brooklyn</u> | <u>Queens</u> | <u>Staten Island</u> |
|-------------------------|--------------|-----------------|---------------|----------------------|
| Current Year            | 7,985        | 14,666          | 11,653        | 4,419                |
| First Year              | 8,384        | 15,398          | 12,231        | 4,641                |
| Third Year              | 8,719        | 16,020          | 12,729        | 4,824                |

The prevention quality indicators (PQIs) are rates of admissions to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization or for which early intervention can prevent complications or more severe disease.

| <u>PQIs: # of admissions per 100,000 adult population</u> | <u>Bronx-Service Area Zip Codes</u> | <u>Brooklyn Service Area Zip Codes</u> | <u>Queens: Expected Service Area Zip Codes (Excludes 11451) in 2013</u> | <u>Staten Island Service Area Zip Codes</u> | <u>NYS</u> |
|---|-------------------------------------|--|---|---|------------|
| All PQIs  | 4,194                               | 2,544                                  | 2,060   | 1,938                                       | 1,563      |
| All Acute   | 996                                 | 579                                    | 529   | 513   | 526        |
| All Circulatory   | 1,269                               | 804                                    | 701   | 497   | 456        |
| All Diabetes  | 735                                 | 542                                    | 433   | 351   | 224        |
| All Respiratory   | 1,153                               | 599                                    | 395   | 568   | 357        |

*The PQIs for the proposed service areas for the four sites are significantly poor compared with those of the State (Source: NYSDOH)*

Brookdale University Medical Center, Elmhurst Hospital Center, Jacobi Medical Center, Lincoln Medical and Mental Health Center, Richmond University Medical Center, and Staten Island University Hospital will provide backup services to the four MCHC sites.

**Conclusion**

This network of clinics will provide enhanced access to services for individuals with disabilities who also have chronic health conditions. Coordinated primary and specialty services will be provided to patients living in communities that have been designated as Health Professional Shortage and Medically Underserved Areas.

**Recommendation**

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

**Programmatic Analysis**

**Program Proposal**

Establish a diagnostic and treatment center with three extension clinics through the acquisition of four sites from the United Cerebral Palsy Associations of New York State, Inc (UCP). One location (Queens) had been operating by UCP under a temporary operating certificate. Upon approval of this project that site will obtain an operating certificate with no expiration date.

| <b>Proposed Operator</b> | <b>Metro Community Health Centers, Inc.</b>  |  |
|--------------------------|--|--|
| Operator Type            | Not-for-Profit   |  |
| Site Addresses           | Metro-Bronx<br>979 Cross Bronx Expwy<br>Svc Rd North, Bronx  | Linda Buch Gerardi Metro<br>921 East New York Ave,<br>Brooklyn |
|                          | Koicheff Metro<br>2324 Forest Ave,<br>Staten Island  | Metro – Queens<br>51-40 59 <sup>th</sup> St, Woodside          |
| Hours of Operation       | Monday through Friday from 7:00 am to 5:00 pm<br>(Extended as necessary to accommodate patient needs). |  |

|  |                                  |
|--|----------------------------------|
| Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)                   | 56.8 FTEs / 57 FTEs              |
| Medical Director(s)  | Raojibhai S. Patel               |
| Emergency, In-Patient and Backup Support Services Agreement and Distance | Various agreements are in place. |

### Character and Competence

The board members are:

- James Johansen, Chair
- Lee Allen
- J. David Seay
- Howard Siegel
- Lynn Arola
- Mae Covington Coggins
- Deborah Farruggia
- Victoria Ruisi
- Monique Dennis-Farrington

James Johansen is the president of a lawn and garden sales company and has served on the board of the Cerebral Palsy Associations of New York State since 1995. Lee Allen is the owner of a commercial real estate company. J. David Seay is an attorney who is currently general counsel to United Cerebral Palsy Associations of New York State. Howard Siegel is the CEO of an insurance and risk management company. The remaining proposed board members are parents of patients with disabilities. Federal requirements for FQHCs state that greater than 50% of the board must be comprised of patients or their parents/legal representatives.

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.

### 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.

### Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Recommendation

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

# Financial Analysis

## Loan and Security Agreement

*Dated:* July 27, 2012  
*Lender:* United Cerebral Palsy Association of New York State, Inc.  
(CP of NYS)  
*Borrower:* Metro Community Health Centers, Inc. (Metro)  
*Amount:* Up to but not exceeding \$2,280,577  
*\*Terms:* 5 years, 4% fixed interest rate  
*Provisions:* Subvention loan provisions: Should Metro Community Health Centers demonstrate its inability to make monthly payments, CP of NYS shall renegotiate more lenient terms, including postponement or payment reductions, as needed.  
CP of NYS will transfer all equipment currently utilized in the four health centers to Metro. Metro will pay an annual amount equal to full year depreciation, which is approximately \$82,568, until equipment has no remaining asset value.

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 Agreements

The applicant has submitted separate executed lease agreements for each location site dated April 12, 2012, the terms of which are summarized below:

### Bronx Metro Community Health Center, Bronx Site

*Landlord:* 1880 Boston Road, LLC  
*Sub lessor:* United Cerebral Palsy Associations of New York State, Inc. d/b/a Cerebral Palsy Association of New York State  
*Sub lessee:* Metro Community Health Centers, Inc.  
*Premises:* Approximately 24,322 sq. ft. on the second floor in the building known as the Metro Community Health Center, 1880 Boston Road, Bronx  
*Term:* 5 years with the option to renew for an additional 5 years.  
*Rent:* \$1,094,490/year (\$45/sq. ft.) plus \$62,400/year for parking (26 spaces @ \$200/mo.) with a 3.5% increase yearly.  
*Provisions:* The sub lessee shall be responsible for utilities, insurance and maintenance.

### Linda Buch Gherardi Metro Community Health Center, Brooklyn Site

*Landlord:* Blake Christopher Corp.  
*Sub lessor:* United Cerebral Palsy Associations of New York State, Inc. d/b/a Cerebral Palsy Association of New York State  
*Sub lessee:* Metro Community Health Centers, Inc.  
*Premises:* Approximately 6,245 sq. ft. in the building known as the Linda Buch Gherardi Health Center, 921 East New York Ave., Brooklyn  
*Term:* 4 years with the option to renew for an additional 5 years.  
*Rent:* \$156,125/year (\$25/sq. ft.) plus \$5,700/year for additional rent for common space with a 3% increase yearly  
*Provisions:* The sublessee shall be responsible for utilities, insurance and maintenance.



Queens Metro Community Health Center, Woodside Site

*Master*  
*Landlord:* 59<sup>th</sup> Realty, Inc.  
*Sub landlord:* Cerebral Palsy Transport, Inc.  
*Sub lessor:* United Cerebral Palsy Associations of New York State, Inc. d/b/a Cerebral Palsy Association of New York State  
*Sub lessee:* Metro Community Health Centers, Inc.  
*Premises:* Approximately 2,587 sq. ft. in the building known as the Queens Health Care Center, 51-40 59<sup>th</sup> Street, Woodside  
*Term:* 5 years with the option to renew for an additional 5 years.  
*Rent:* \$46,566/year (\$18/sq. ft.) plus \$6,683/year for additional rent for common space with a 3% increase yearly.  
*Provisions:* The sub-sublessee shall be responsible for utilities, insurance and maintenance.

Koicheff Metro Community Health Center, Staten Island Site

*Landlord:* United Cerebral Palsy Association of New York State, Inc. d/b/a Cerebral Palsy Association of New York State.  
*Lessee:* Metro Community Health Centers, Inc.  
*Premises:* Approximately 7,312 sq. ft. in the building known as the Koicheff Health Care Center, 2324 Forest Ave, Staten Island  
*Term:* 5 years with the option to renew for 5 years.  
*Rent:* \$182,800/year (\$25/sq. ft.) with a 3% increase yearly  
*Provisions:* The lessee shall be responsible for utilities, insurance and maintenance.

The lease agreements are non-arm's length agreements and Letters of Opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness.

Administrative Services and Employee Lease Agreement

The applicant has submitted an executed administrative services and employee lease agreement, the terms of which are summarized below:

*Date:* April 12, 2012  
*Facility Operator:* Metro Community Health Centers, Inc.  
*Provider:* Cerebral Palsy Associations of New York State, Inc., d/b/a Cerebral Palsy Association of New York State.  
*Services Provided:* Accounting, bookkeeping, billing, accounts receivable, accounts payable, purchasing, payroll, human resources and benefits management, IT and telecommunications networking, and leased employees for administrative purposes.  
*Term:* 5 years with the option to renew every 5 years.  
*Compensation:* \$349,565/year

Contractor Agreement

The applicant has submitted a draft contractor agreement, the terms of which are summarized below:

*Facility Operator* Metro Community Health Centers, Inc.  
*Contractor:* Urban Health Plan  
*Services Provided:* Technical assistance, assessment of feasibility and development of a Joint Commission compliance plan, training for providers and clinical staff, consultation on health informatics, FQHC standards, and health center and service developments.  
*Term:* On-going until either party terminates with 30 days prior written notice to the other.

Compensation: \$100,000/year

The agreements appear reasonable.

#### Operating Budget

The applicant has submitted an operating budget in 2012 dollars, for the first year subsequent to change in operator:

|                 |                  |
|-----------------|------------------|
| Revenues:       | \$9,378,916      |
| Expenses:       |                  |
| Operating       | \$6,999,953      |
| Capital         | <u>1,829,833</u> |
| Total Expenses: | \$8,829,786      |
| Net Income:     | \$549,130        |
| Utilization:    | 42,759           |
| Cost per visit: | \$206.50         |

Utilization by payor source for the first year is as follows:

|                          |       |
|--------------------------|-------|
| Commercial Managed Care  | 0.7%  |
| Medicare Fee-for-Service | 23.5% |
| Medicaid Fee-for-Service | 66.9% |
| Medicaid Managed Care    | 1.8%  |
| Charity Care             | 2.0%  |
| Private Pay/Other        | 5.1%  |

Expense and utilization assumptions are based on historical experience of the existing diagnostic and treatment centers.

#### Capability and Feasibility

Cerebral Palsy Association of New York State, Inc. will loan Metro \$2,281,000 with a five year term at an interest rate equal to the prime rate (3.25% as of 7/10/12) to cover working capital and start-up costs, which include equipment balance transfer, legal, accounting and filing fees, and cash flow advance. Presented as BFA Attachment A, is the financial summary of United Cerebral Palsy Associations of New York State, Inc., which indicates the availability of sufficient funds.

Working capital requirements are estimated at \$1,471,631 based on two months of first year expenses and is being provided by CP of NYS as part of the loan to Metro. The submitted budget for all four sites indicates a net income of \$549,130 during the first year subsequent to the change in operator. The budget appears reasonable.

As shown on BFA Attachment B, the financial summary of United Cerebral Palsy Associations of New York State, Inc. indicates that the facility has experienced positive working capital, positive net asset position and generated a net income of \$2,708,020 and \$1,755,227 for 2010 and 2011, respectively.

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, United Cerebral Palsy Association of New York State, Inc.                         |
| BFA Attachment C | Internal Financial Summary as of April 30, 2012, United Cerebral Palsy Association of New York, Inc. |
| BFA Attachment D | Projected Balance Sheet  |

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 9th day of August, 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 Metro Community Health Center as the new operator of four (4) diagnostic and treatment centers currently operated by Cerebral Palsy Association of New York State, 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:

121340 E

Metro Community Health Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed Contractor Agreement 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]

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  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237



# Public Health and Health Planning Council

Project # 121103-E

**HRNC Operating, LLC**  
**d/b/a Highland Rehabilitation and Nursing Center**

**County:** Orange (Middletown)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** February 28, 2012

## Executive Summary

**Description**

HRNC Operating, LLC, d/b/a Highland Rehabilitation and Nursing Center (Highland) a limited liability company, is seeking approval to be established as the operator of St. Teresa's Nursing & Rehabilitation Center (St. Teresa's), a voluntary not-for profit 98-bed residential health care facility (RHCF) located at 120 Highland Avenue, Middletown.

This change of ownership for both the real property and the operations began on January 13, 2012 when St. Teresa's entered into an asset purchase and sale agreement with HRNC Realty, LLC, which is comprised of the same members as HRNC Operating, LLC. After the initial change of ownership, HRNC Operating, LLC will receive via transfer from HRNC Realty, LLC the operating interests in St. Teresa's while the Real Property remains with HRNC Realty, LLC. Ownership of the operation and real estate before and after the requested change is as follows:

| <b>REAL ESTATE</b>                               |                 |
|--|-----------------|
| <b>Before</b><br>St. Teresa's Nursing Home, Inc. |                 |
| <u>MEMBER</u>                                    | <u>Interest</u> |
| St. Teresa's Nursing Home, Inc.                  | 100%            |
| <b>After</b><br>HRNC Realty, LLC                 |                 |
| <u>MEMBER</u>                                    | <u>Interest</u> |
| -- Ephraim Zagelbaum                             | 45%             |
| -- Alexander Barth                               | 20%             |
| -- Yoel Zagelbaum                                | 10%             |
| -- Yechiel Zagelbaum                             | 10%             |
| -- Pincus Zagelbaum                              | 10%             |
| -- Yehuda Walden                                 | 5%              |

| <b>OPERATION</b>  |                 |
|---|-----------------|
| <b>Before</b><br>St. Teresa's Nursing Home, Inc.  |                 |
| <u>MEMBER</u>   | <u>Interest</u> |
| St. Teresa's Nursing Home, Inc.   | 100%            |
| <b>After</b><br>HRNC Operating, LLC<br>d/b/a Highland Rehabilitation and Nursing Center |                 |
| <u>MEMBER</u>   | <u>Interest</u> |
| -- Ephraim Zagelbaum  | 45%             |
| -- Alexander Barth  | 20%             |
| -- Yoel Zagelbaum   | 10%             |
| -- Yechiel Zagelbaum  | 10%             |
| -- Pincus Zagelbaum   | 10%             |
| -- Yehuda Walden  | 5%              |

**DOH Recommendation**  
 Contingent approval.

**Need Summary**  
 Highland's utilization was above the 97% planning optimum for 2008, 2009, and 2010.

**Program Summary**  
 No adverse information has been received concerning the character and competency of the applicant.

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

|                |                     |                  |
|----------------|---------------------|------------------|
| <b>Budget:</b> | <b>Revenues:</b>    | \$ 8,890,550     |
|                | <b>Expenses:</b>    | <u>8,534,484</u> |
|                | <b>Gain/(Loss):</b> | \$ 356,066       |

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

## Recommendations

Health Systems Agency

There will be no HSA review of this project.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment that is acceptable to the Department of Health, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
3. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
4. Submission of a photocopy of an executed Certificate of Assumed Name of HRNC Operating, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amendment to Certificate of Formation of HRNC Operating, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed amendment to the Operating Agreement of HRNC Operating, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Application for Authority of HRNC Operating, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed amendment to the Lease Agreement of HRNC Operating, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed amendment to the Asset Purchase Agreement and Sale Agreement between St. Teresa's Nursing Home, Inc. and HRNC Realty, LLC, acceptable to the Department. [CSL]
10. 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]
11. 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

**August 9, 2012.**

## Need Analysis

### Background

St. Teresa's Nursing Home utilization is higher than RHCFC Utilization in Orange County overall for all years in question, as shown in the table below:

| <u>RHCFC Utilization</u>  | <u>2008</u> | <u>2009</u> | <u>2010</u> |
|---------------------------|-------------|-------------|-------------|
| St. Teresa's Nursing Home | 97.3%       | 97.3%       | 97.0        |
| Orange County             | 85.6%       | 93.3%       | 95.0%       |

| <u>RHCFC Bed Need</u>   | <u>Orange County</u> |
|-------------------------|----------------------|
| 2016 Projected Need     | 2,122                |
| Current Beds            | 1,438                |
| Beds Under Construction | - 20                 |
| Total Resources         | 1,418                |
| Unmet Need              | 704                  |

### Conclusion

Highland Rehabilitation and Nursing Center's utilization is above the planning optimum of 97%. There will be no change in services or capacity.

### Recommendation

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

## Programmatic Analysis

### Facility Information

|                              | <u>Existing</u>                                | <u>Proposed</u>   |
|------------------------------|--|---|
| <i>Facility Name</i>         | St. Teresa's Nursing and Rehabilitation Center | Highland Rehabilitation and Nursing Center  |
| <i>Address</i>               | 120 Highland Avenue<br>Middletown, NY 10940    | Same  |
| <i>RHCFC Capacity</i>        | 98   | Same  |
| <i>ADHC Program Capacity</i> | NA   | Same  |
| <i>Type Of Operator</i>      | Corporation                                    | Limited Liability Company   |
| <i>Class Of Operator</i>     | Voluntary                                      | Proprietary   |
| <i>Operator</i>              | St. Teresa's Nursing Home, Inc.                | HRNC Operating, LLC d/b/a<br><br><u>Membership</u><br>Ephraim Zagelbaum      45%<br>-- Managing Member<br><br>Alexander Barth            20%<br>Yechiel Zagelbaum        10%<br>Yoel Zagelbaum            10%<br>Pincus Zagelbaum         10%<br>Yehuda Walden             5% |



Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

|  |                      |
|--|----------------------|
| Alpine Rehabilitation and Nursing Center         | 7/29/2009 to present |
| Cambridge Rehabilitation and Nursing Center (MA) | 9/23/2010 to present |
| Norwich Rehabilitation and Nursing Center        | 1/1/2011 to present  |
| Tarrytown Hall Care Center                       | 4/1/2008 to present  |

- INDIVIDUAL BACKGROUND REVIEW:

**Ephraim Zagelbaum** is the current Administrator of Record at Windsor Park Nursing Home in Queens Village having served in the position since May, 2004. Mr. Zagelbaum is a licensed New York State nursing home administrator with license in good standing. Mr. Zagelbaum discloses the following health facility ownership interests:

|   |                      |
|---|----------------------|
| Alpine Rehabilitation and Nursing Center                    | 7/29/2009 to present |
| Cambridge Rehabilitation and Nursing Center (Cambridge, MA) | 9/23/2010 to present |
| Norwich Rehabilitation and Nursing Center                   | 1/1/2011 to present  |
| Tarrytown Hall Care Center                                  | 4/1/2008 to present  |

**Alexander Barth** is the current Administrator of Record at Tarrytown Hall Care Center, having served in the position since January, 2007. Mr. Barth is a licensed New York State nursing home administrator with license in good standing. Mr. Barth previously held a valid EMT license but is not currently registered. Mr. Barth discloses the following health facility ownership interests:

|   |                      |
|---|----------------------|
| Alpine Rehabilitation and Nursing Center                    | 7/29/2009 to present |
| Cambridge Rehabilitation and Nursing Center (Cambridge, MA) | 9/23/2010 to present |
| Norwich Rehabilitation and Nursing Center                   | 1/1/2011 to present  |
| Tarrytown Hall Care Center                                  | 1/1/2011 to present  |

**Yechiel Zagelbaum** is a pediatrician in private practice in Brooklyn since 2002. Dr. Zagelbaum is a New York State physician with license in good standing. Mr. Zagelbaum discloses the following health facility ownership interests:

|   |                      |
|---|----------------------|
| Alpine Rehabilitation and Nursing Center                    | 7/29/2009 to present |
| Cambridge Rehabilitation and Nursing Center (Cambridge, MA) | 9/23/2010 to present |
| Norwich Rehabilitation and Nursing Center                   | 1/1/2011 to present  |
| Tarrytown Hall Care Center                                  | 4/1/2008 to present  |

**Yoel Zagelbaum** is an attorney in good standing who serves as the President of Riverside Abstract, LLC, a title insurance company which he also owns, located in Brooklyn. Mr. Zagelbaum discloses the following health facility ownership interests:

|   |                      |
|---|----------------------|
| Alpine Rehabilitation and Nursing Center                    | 7/29/2009 to present |
| Cambridge Rehabilitation and Nursing Center (Cambridge, MA) | 9/23/2010 to present |
| Norwich Rehabilitation and Nursing Center                   | 1/1/2011 to present  |
| Tarrytown Hall Care Center                                  | 4/1/2008 to present  |

**Pincus Zagelbaum** is the Vice-President/CEO of St. Mary's Healthcare System for Children, a specialty nursing home located in Bayside, Queens. Mr. Zagelbaum is a licensed New York State nursing home administrator with license in good standing. Mr. Zagelbaum discloses the following health facility ownership interests:

|   |                      |
|---|----------------------|
| Alpine Rehabilitation and Nursing Center                    | 7/29/2009 to present |
| Cambridge Rehabilitation and Nursing Center (Cambridge, MA) | 9/23/2010 to present |
| Norwich Rehabilitation and Nursing Center                   | 1/1/2011 to present  |
| Tarrytown Hall Care Center                                  | 4/1/2008 to present  |

**Yehuda Walden** is employed as the manager of Personal Healthcare, a healthcare company located in Tarrytown. Mr. Walden discloses the following health facility ownership interest:

Cambridge Rehabilitation and Nursing Center (Cambridge, MA) 9/23/2010 to present

**Character and Competence – Analysis:**

A review of the operations of Alpine Rehabilitation and Nursing Center, Norwich Rehabilitation and Nursing Center and Tarrytown Hall Care Center for the time periods listed reveals that a substantially consistent high level of care has been provided, since there were no enforcements.

The review of Cambridge Rehabilitation and Nursing Center (MA) for the time periods listed reveals that a substantially consistent high level of care has been provided, since there were no enforcements.

**Project Review – Analysis:**

No changes in the program or physical environment are proposed in this application. No administrative services/ consulting agreement is proposed in this application.

Recommendation

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

**Financial Analysis**

Asset Purchase Agreements

The change in ownership of operation and real estate will be effectuated in accordance with the terms of the Asset Purchase Agreements, summarized below:

Operations and Real Estate

|                            |  |
|----------------------------|--|
| <i>Seller:</i>             | St. Teresa’s Nursing Home, Inc.  |
| <i>Purchaser:</i>          | Highland RNC Realty, LLC   |
| <i>Assets Transferred:</i> | The Parcel or parcels of land described in Exhibit A (land), together with any and all rights, privileges and easements appurtenant thereto owned by seller, together with all buildings and improvements located thereon, including , the facility (collectively, “ improvements”; the land, together with the improvements thereon, the real property. All personal property of seller to be sold to buyer pursuant to the terms of the Bill of sale as shown in exhibit C, any unpaid award for any taking of condemnation or any damage to the land or the improvements by reason of change of grade of any street or highway. All easements, licenses, rights and appurtenances relating to any of the foregoing; any tangible property of seller, including without limitation, all good will, if any. All assignable warranties and guaranties made by or received from any person with respect to the improvements or personal property. All available building plans, floor plans and specifications and surveys relating to real property. All assignable licenses, permits, building inspection approvals, certificates of occupancy, approvals, subdivision maps, accreditations and entitlements issued, approved or granted by governmental authorities in connection with the ownership and operation of the real property. |
| <i>Assets Excluded:</i>    | Cash, bank accounts, investments, accounts receivable (including amounts earned through the closing date but not yet billed), the proceeds of all pending Medicaid or other rate appeals and any Medicaid or Medicare reimbursements for services rendered prior to the closing date, computer software licenses and the name of the seller “St. Teresa’s Nursing Home, inc, or “St. Teresa’s Nursing and Rehabilitation Center”. Seller will however enter into a License agreement   |

containing conditions mutually acceptable to seller and buyer which allow Buyer to continue to use the "St. Teresa's" name for a period of 2 years after the closing date.

*Liabilities Assumed:* None  
*Purchase Price:* \$6,250,000  
*Payment of Purchase Price:* \$625,000 in escrow with \$5,625,000 paid at closing. \$5,000,000 will come from a loan with a 5.6% interest rate and 10 year term with a 20 year amortization. The remaining will come from member's equity.

The applicant has Submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently there are no outstanding audit liabilities for this facility.

**Lease Agreement and Medicaid Capital Reimbursement**

HRNC Operating, LLC d/b/a Highland Rehabilitation and Nursing Center (The Center) will occupy the premise under the terms of a lease agreement, summarized as follows:

*Lessor:* HRNC Realty, LLC  
*Lessee:* HRNC Operating, LLC d/b/a Highland Rehabilitation and Nursing Center (The Center)  
*Premises:* 98-Bed Skilled Nursing Facility located at 120 Highland Avenue, Middletown ,NY  
*Term:* 5 Years with 15 automatic (1) year extensions  
*Annual Rental:* \$421,875 (\$35,156.25 per month)  
*Type:* Triple Net lease - related party

**Operating Budget**

The applicant has submitted an operating budget, in 2012 dollars, for the first year of operations subsequent to the change in operator, summarized below:

|                            | <u>Per Diem</u> | <u>Total</u>            |
|----------------------------|-----------------|-------------------------|
| <b>Revenues:</b>           |                 |                         |
| Medicaid Fee-for-Service   | \$190.31        | \$5,063,890             |
| Medicare Fee-for-Service   | 464.41          | 2,932,724               |
| Private Pay                | 461.74          | <u>893,936</u>          |
| <b>Total</b>               |                 | <b>\$8,890,550</b>      |
| <b>Expenses:</b>           |                 |                         |
| Operating                  |                 | \$8,072,781             |
| Capital                    |                 | <u>461,704</u>          |
| <b>Total</b>               |                 | <b>\$8,534,485</b>      |
| <b>Net Income</b>          |                 | <b><u>\$356,065</u></b> |
| Utilization( Patient days) |                 | 34,859                  |
| Occupancy                  |                 | 97.45%                  |

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

- Overall utilization is projected at 97.45%, Utilization by payor source is expected as follows:

|                          |        |
|--------------------------|--------|
| Medicare Fee-for-Service | 18.12% |
| Medicaid Fee-for-Service | 76.33% |
| Private Pay              | 5.55%  |

- Breakeven occupancy is projected at 93.55% %

### Capability and Feasibility

The issue of capability centers on the applicant's ability to meet the purchase price, working capital requirements, and initiate operations as a financially viable entity. The proposed members will provide equity of \$1,250,000 from personal resources and a loan of \$5,000,000 from the above stated terms for the purchase price. Presented as BFA Attachment A is the Net worth of proposed members, which shows the overall availability of funds to meet all the needs for the project. Mr. Ephraim Zagelbaum has provided an affidavit that states he will cover any of the members' unmet equity requirements.

The applicant has estimated working capital requirements at \$1,422,414, which is approximately two months' of first year expenses. The proposed members will provide equity of \$711,199 toward working capital, and borrow the remainder of \$711,215. A letter of interest has been provided for the working capital loan, indicating repayment terms of 5.6% interest over 5 years. M&T 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 Pro-forma HRNC Operating, LLC indicates that the applicant will initiate operation with member's equity of \$711,215. BFA Attachment D, the Pro-forma for HRNC Realty, LLC indicates they will initiate operation with member's equity of \$1,250,000.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The submitted budget indicates that a net income of \$356,065 would be maintained during the first year following change in ownership. Following, is a comparison of the current year revenues and expenses and projected revenue and expense:

|                                  |             |
|----------------------------------|-------------|
| Annual 2011 Income               | \$8,951,681 |
| Annual 2011 Expense              | 9,067,918   |
| Annual 2011 Net Income           | - \$116,237 |
| Projected incremental Income     | -\$61,132   |
| Projected incremental Expense    | -533,434    |
| Projected incremental Net Income | \$472,302   |
| Incremental Net Income (Loss)    | \$356,065   |

Projected income includes revenues at budgeted occupancy and payor source, to accommodate Medicaid access requirements as well as the difference between current year and projected levels. Projected expenses include acquisition capital expenses, expenses at budgeted occupancy, and the difference between current year and projected levels. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment B Financial Summary for St. Teresa's Nursing & Rehabilitation Center, the facility had an average negative working capital position, an average negative net asset position, and generated an average net income of \$140,777 during the period 2009 through 2011. The 2011 loss is due to approximately a \$270,000 decline in revenues from 2010 to 2011. It is also noted that operating expenses included \$345,000 in management fees associated with Catholic Health Care Systems, which will not be applicable after the change in ownership. If the facility had not had these fees, it would have given the facility a positive operating income for 2011.

As shown on BFA Attachment E Financial Summary for Tarrytown Hall Care Center and Alpine Rehabilitation and Nursing Center, the facility had an average negative working capital position and an average positive net asset position, and generated an average net income of \$969,367 during the period 2009 through 2011. The 2009 loss was attributable to the fact that the facility's 90% cost reporting period for rebasing purposes was completed in the second quarter of 2009, and the facility had not received its rebased Medicaid rate on the transfer of ownership related to Project No. 062303. Upon receipt of its rebased Medicaid rate, the facility's operating income shows positive net income, which can be seen in the 2010 and 2011 financial summary for the facility.

As shown on BFA Attachment F Financial Summary for Alpine Rehabilitation and Nursing Center, the facility had an average negative working capital position and an average positive net asset position, and generated an average net income of \$157,114 during the period 2010 through 2011.

The 2011 loss was due to two adjustments in the facility's Medicaid rate; one adjustment was completed in April 2011 with the facility receiving their revised Medicaid rates, which resulted in a reduction of over \$80,000 dollars in revenue, and the second adjustment was completed in November of 2011, which reduced the revenue by approximately \$100,000 dollars. Due to the fact that the final adjustment happened so late, the facility was not able to act in time to reduce expenses to eliminate the operating loss for 2011, but they have taken these adjustments into consideration for 2012.

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 Members                                  |
| BFA Attachment B | Financial Summary St. Teresa's Nursing & Rehabilitation Center |
| BFA Attachment C | Pro-forma Balance Sheet HRNC Operating, LLC                    |
| BFA Attachment D | Pro-forma Balance Sheet, HRNC Realty, LLC                      |
| BFA Attachment E | Financial Summary Tarrytown Hall Care Center                   |
| BFA Attachment F | Financial Summary Alpine Rehabilitation and Nursing Center     |

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 9th day of August, 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 Highland Rehabilitation and Nursing Center, LLC d/b/a Highland Rehabilitation and Nursing Center as the new operator of St. Teresa's Nursing and Rehabilitation Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

121103 E

FACILITY/APPLICANT:

HRNC Operating, LLC d/b/a Highland  
Rehabilitation and Nursing Center

## APPROVAL CONTINGENT UPON:

1. Submission of a commitment that is acceptable to the Department of Health, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
2. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
3. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed mortgage, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
4. Submission of a photocopy of an executed Certificate of Assumed Name of HRNC Operating, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed amendment to Certificate of Formation of HRNC Operating, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed amendment to the Operating Agreement of HRNC Operating, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Application for Authority of HRNC Operating, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed amendment to the Lease Agreement of HRNC Operating, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed amendment to the Asset Purchase Agreement and Sale Agreement between St. Teresa's Nursing Home, Inc. and HRNC Realty, LLC, acceptable to the Department. [CSL]
10. 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]
11. 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  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237





# Public Health and Health Planning Council

Project # 121168-E

**Oak Hollow NC Corp.  
d/b/a Oak Hollow Nursing Center**

**County:** Suffolk (Middle Island)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** March 30, 2012

## Executive Summary

### Description

Oak Hollow NC Corp., d/b/a Oak Hollow Nursing Center, an existing proprietary business corporation and 164-bed residential health care facility (RHCF) located at 49 Oakcrest Avenue, Middle Island, is seeking approval for a transfer in ownership. Ownership of the facility before and after the requested change is as follows:

| <u>Before</u>    |                 | <u>After</u>     |                 |
|------------------|-----------------|------------------|-----------------|
| <u>Name</u>      | <u>Interest</u> | <u>Name</u>      | <u>Interest</u> |
| Dr. Jacob Dimant | 94%             | Dr. Jacob Dimant | 10%             |
| Dr. Rose Dimant  | 6%              | Dr. Rose Dimant  | 10%             |
|                  |                 | Elliot A. Dimant | 40%             |
|                  |                 | Kevin B. Teitler | 40%             |

Dr. Rose Dimant is Dr. Jacob Dimant's wife; Elliot A. Dimant is his son; and Kevin B. Teitler is his step-son. There will be no financial impact related to the transfer of ownership.

The proposed members also are concurrently seeking establishment approval to acquire ownership of Crown Nursing and Rehabilitation Center (CON #121175-E) and Lakeview Rehabilitation and Care Center (CON #121174-E). All three applications will be processed concurrently.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time

prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

DOH Recommendation  
Contingent approval.

### Need Summary

As this application merely involves member changes to an existing established entity, no Need review is required.

### Program Summary

No negative information has been received concerning the character and competence of the above applicants. No changes in the program or physical environment are proposed in this application.

### Financial Summary

There are no project costs associated with this application.

|         |                     |                   |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i>    | \$ 13,192,400     |
|         | <i>Expenses:</i>    | <u>12,385,225</u> |
|         | <i>Gain/(Loss):</i> | \$ 807,175        |

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

## 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 an executed Certificate of Amendment of the Certificate of Incorporation of Oak Hollow NC Corp., acceptable to the Department of Health. [CSL]
2. Submission of a photocopy of the amended bylaws of Oak Hollow NC Corp., acceptable to the Department. [CSL]

Council Action Date

**August 9, 2012.**

# Programmatic Analysis

## Facility Information

|                              | <i>Existing</i>  | <i>Proposed</i>  |
|------------------------------|--|--|
| <i>Facility Name</i>         | Oak Hollow Nursing Center  | Same   |
| <i>Address</i>               | 49 Oakcrest Avenue<br>Middle Island, NY. 11953   | Same   |
| <i>RHCF Capacity</i>         | 164  | Same   |
| <i>ADHC Program Capacity</i> | N/A  | N/A  |
| <i>Type Of Operator</i>      | Corporation  | Corporation  |
| <i>Class Of Operator</i>     | Proprietary  | Proprietary  |
| <i>Operator</i>              | Oak Hollow NC Corp.<br><br><u>Members:</u><br>Dr. Jacob Dimant.....94%<br>Dr. Rose Dimant.....6% | Same<br><br><u>Managing Members:</u><br>Dr. Jacob Dimant.....10%<br>Dr. Rose Dimant.....10%<br><br><u>Members:</u><br>Elliot Dimant.....40%<br>Kevin Teitler.....40%<br><br><u>Member of Board</u><br>Menahem Dimant..... 0% |

## Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 7/1/1989 – present |
| Lakeview Rehabilitation and Care Center | 1/1/1999 – present |
| Oak Hollow Nursing Center               | 1/1/1999 – present |
| Little Neck Nursing Home                | 1994 – 3/31/2011   |

- INDIVIDUAL BACKGROUND REVIEW:

**Dr. Rose Dimant** has disclosed ownership interest in the following Residential Health Care Facilities:

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 7/1/1989 – present |
| Lakeview Rehabilitation and Care Center | 1/1/1999 – present |
| Oak Hollow Nursing Center               | 1/1/1999 – present |

**Elliot Dimant** is NYS licensed attorney and is in good standing. He discloses no ownership interest in health facilities.

**Kevin Teitler** discloses no ownership interest in health facilities.

**Dr. Menahem Dimant** is a New York State licensed physician and is in good standing. He discloses ownership interest in the following Residential Health Care Facilities:

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 1/1/2011 – present |
| Lakeview Rehabilitation and Care Center | 1/1/2011 – present |
| Oak Hollow Nursing Center               | 1/1/2011 – present |
| Little Neck Nursing Home                | 1994 – 3/31/2011   |

**Character and Competence – Analysis:**

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for the **Crown Nursing and Rehabilitation Center** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no enforcements.

A review of the **Lakeview Rehabilitation and Care Center** for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order for surveillance findings on August 25, 2006. Deficiencies were found under:
  1. 10 NYCRR 415.12 – Quality of Care.
  2. 10 NYCRR 415.12(f)(1) – Quality of Care: Mental and Psychosocial Functioning
  3. 10 NYCRR 415.12(h) – Quality of Care: Accidents
  
- The facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on January 25, 2008. Deficiencies were found under:
  1. 10NYCRR 415.12 – Quality of Care

A review of operations for **Lakeview Rehabilitation and Care Center** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for the **Oak Hollow Nursing Center** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no enforcements.

A review of operations for the **Little Neck Nursing Home** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

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

## Financial Analysis

Operating Budget

Following is a summary of the submitted operating budget, presented in 2012 dollars, for the first year subsequent to change in ownership:

|                   |                   |
|-------------------|-------------------|
| Revenues:         |                   |
| Medicaid          | \$8,757,600       |
| Medicare          | 3,226,700         |
| Private Pay/Other | <u>1,208,100</u>  |
| Total             | \$13,192,400      |
|                   |                   |
| Expenses:         |                   |
| Operating         | \$11,379,200      |
| Capital           | <u>1,006,025</u>  |
| Total             | \$12,385,225      |
|                   |                   |
| Net Income        | <u>\$ 807,175</u> |

- Medicaid capital component is based on the return of and return on equity methodology.
- Medicare and private pay revenues are based on current payment rates.
- Overall utilization is projected at 89.2%.
- Utilization by payor source is anticipated as follows:

|               |       |
|---------------|-------|
| Medicaid      | 79.6% |
| Medicare      | 14.3% |
| Private/Other | 6.1%  |

- Breakeven utilization is projected at 83.8%.

### Capability and Feasibility

There are no project costs associated with this application. There is no financial arrangement in regards to the transfer of ownership because Dr. Jacob Dimant is transferring 84% of his shares to the stated proposed members as a gift.

Working capital requirements are estimated at \$2,064,204, based on two months' of first year expenses; and will be satisfied from the facility's existing cash and receivables, and additional members' equity. Net cash and receivables (minus accounts payable) were \$699,530 on December 31, 2011, resulting in a need for additional equity of \$1,364,674 from the proposed members. Review of BFA Attachment A, net worth of proposed shareholders, reveal sufficient resources to satisfy the working capital requirements for all three of the RHC changes in ownership.

BFA Attachment B presents the pro-forma balance sheet of Oak Hollow Nursing Center. As shown, the facility will initiate operation with \$14,744 members' equity.

The submitted budget indicates that a net profit of approximately \$807,175 would be generated during the first year following change in ownership. The budget appears reasonable.

Review of BFA Attachment C, financial summary of Oak Hollow Nursing Center, indicates that the facility has experienced negative working capital and maintained positive equity positions, and experienced net losses from operations of \$456,299 and \$395,735 for 2011 and 2009, respectively. The facility experienced an average annual occupancy of 88.7% during 2009 to 2011.

The 2009 net loss from operations was due to a Trust litigation resulting in an increase for liability for workers compensation of approximately \$1 million. And in 2011 there was an approximate write-off of \$500,000 in bad debts and a reduction of occupancy due to renovations. These were both non-recurring items. The negative working capital was due to loans to related parties that had become current. BFA Attachment D, the internal financial summary of Crown Nursing & Rehab Center as of March 31, 2012, indicates that the facility has experienced negative working capital and maintained positive net equity and a net income from operations of \$176,332.

Review of BFA Attachment E, financial summary of Crown Nursing & Rehab Center, indicates that the facility has maintained positive working capital in 2010 and equity positions for 2009-2011, and generated average net income of \$990,073 for the period shown. The facility experienced an average annual occupancy of 92.6% during 2009 to 2011. The negative working capital for 2009 and 2011 is due to loans to related parties that had become current.

Review of BFA Attachment F, financial summary of Lakeview Rehabilitation & Center, indicates that the facility has experienced negative working capital and maintained positive equity positions, and generated net income of \$824,163 for the period shown. The facility experienced an average annual occupancy of 90.6% during 2009 to 2011. The negative working capital for 2009-2011 was due to loans to related parties that had become current.

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

### Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA-Attachment A | Net Worth of Proposed Members  |
| BFA-Attachment B | Pro-forma Balance Sheet, Crown Nursing & Rehab Center                              |
| BFA-Attachment C | Financial Summary, Oak Hollow Nursing Center                                       |
| BFA-Attachment D | Financial Summary, Oak Hollow Nursing Center Draft Financials as of March 31, 2012 |
| BFA-Attachment E | Financial Summary, Crown Nursing & Rehab Center                                    |
| BFA-Attachment F | Financial Summary, Lakeview Rehabilitation & Care Center                           |

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 9th day of August, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer in ownership of 84% of Dr. Jacob Ditmant's shares as follows: 4% to Dr. Rose Dimant, 40% to Elliot A. Dimant and 40% to Kevin B. Teitler, 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:

121168 E

FACILITY/APPLICANT:

Oak Hollow NC Corp. d/b/a Oak Hollow  
Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Oak Hollow NC Corp., acceptable to the Department of Health. [CSL]
2. Submission of a photocopy of the amended bylaws of Oak Hollow NC Corp., 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  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237





# Public Health and Health Planning Council

Project # 121174-E

**Crest Hall Corp.**  
**d/b/a Lakeview Rehabilitation and Care Center**

**County: Suffolk (Middle Island)**  
**Purpose: Establishment**

**Program: Residential Health Care Facility**  
**Submitted: March 30, 2012**

## Executive Summary

### Description

Crest Hall Corp. d/b/a Lakeview Rehabilitation and Care Center, an existing proprietary business corporation and 120-bed residential health care facility (RHCF) located at 63 Oakcrest Avenue, Middle Island, is seeking approval for a transfer in ownership. Ownership of the facility before and after the requested change is as follows:

| <u>Before</u>    |                 | <u>After</u>     |                 |
|------------------|-----------------|------------------|-----------------|
| <u>Name</u>      | <u>Interest</u> | <u>Name</u>      | <u>Interest</u> |
| Dr. Jacob Dimant | 94%             | Dr. Jacob Dimant | 10%             |
| Dr. Rose Dimant  | 6%              | Dr. Rose Dimant  | 10%             |
|                  |                 | Elliot A. Dimant | 40%             |
|                  |                 | Kevin B. Teitler | 40%             |

Dr. Rose Dimant is Dr. Jacob Dimant's wife; Elliot A. Dimant is his son; and Kevin B. Teitler is his step-son. There will be no financial impact related to the transfer of ownership.

The proposed members also are concurrently seeking establishment approval to acquire ownership of Crown Nursing and Rehabilitation Center (CON #121175-E) and Oak Hollow Nursing Center (CON #121168-E). All three applications will be processed concurrently.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

### DOH Recommendation

Contingent approval.

### Need Summary

As this application merely involves member changes to an existing established entity, no Need review is required.

### Program Summary

No negative information has been received concerning the character and competence of the above applicants. No changes in the program or physical environment are proposed in this application.

### Financial Summary

There are no project costs associated with this application.

|         |                     |                  |
|---------|---------------------|------------------|
| Budget: | <i>Revenues:</i>    | \$ 10,226,500    |
|         | <i>Expenses:</i>    | <u>9,668,753</u> |
|         | <i>Gain/(Loss):</i> | \$ 557,747       |

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

## Recommendations

Health Systems Agency

There will be no HSA review of this project.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Crest Hall Corp., acceptable to the Department of Health. [CSL]
2. Submission of a photocopy of the amended bylaws of Crest Hall Corp., acceptable to the Department. [CSL]

Council Action Date

**August 9, 2012.**

## Programmatic Analysis

### Facility Information

|                              | <i>Existing</i>   | <i>Proposed</i>   |
|------------------------------|---|---|
| <i>Facility Name</i>         | Lakeview Rehabilitation and Care Center   | Same  |
| <i>Address</i>               | 63 Oakcrest Avenue<br>Middle Island, NY. 11953  | Same  |
| <i>RHCF Capacity</i>         | 120   | Same  |
| <i>ADHC Program Capacity</i> | N/A   | N/A   |
| <i>Type Of Operator</i>      | Corporation   | Corporation   |
| <i>Class Of Operator</i>     | Proprietary   | Proprietary   |
| <i>Operator</i>              | Crest Hall Corp.<br><br><u>Members:</u><br>Dr. Jacob Dimant.....94%<br>Dr. Rose Dimant.....6% | Same<br><br><u>Managing Members:</u><br>Dr. Jacob Dimant.....10%<br>Dr. Rose Dimant.....10%<br><br><u>Members:</u><br>Elliot Dimant.....40%<br>Kevin Teitler.....40%<br><br><u>Member of Board</u><br>Menahem Dimant.....0% |

### Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 7/1/1989 – present |
| Lakeview Rehabilitation and Care Center | 1/1/1999 – present |
| Oak Hollow Nursing Center               | 1/1/1999 – present |
| Little Neck Nursing Home                | 1994 – 3/31/2011   |

- INDIVIDUAL BACKGROUND REVIEW:

**Dr. Rose Dimant** has disclosed ownership interest in the following Residential Health Care Facilities:

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 7/1/1989 – present |
| Lakeview Rehabilitation and Care Center | 1/1/1999 – present |
| Oak Hollow Nursing Center               | 1/1/1999 – present |

**Elliot Dimant** is NYS licensed attorney and is in good standing. He discloses no ownership interest in health facilities.

**Kevin Teitler** discloses no ownership interest in health facilities.

**Dr. Menahem Dimant** is a New York State licensed physician and is in good standing. He discloses ownership interest in the following Residential Health Care Facilities:

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 1/1/2011 – present |
| Lakeview Rehabilitation and Care Center | 1/1/2011 – present |
| Oak Hollow Nursing Center               | 1/1/2011 – present |
| Little Neck Nursing Home                | 1994 – 3/31/2011   |

**Character and Competence – Analysis:**

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for the **Crown Nursing and Rehabilitation Center** for the period identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the **Lakeview Rehabilitation and Care Center** for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order for surveillance findings on August 25, 2006. Deficiencies were found under:
  1. 10 NYCRR 415.12 – Quality of Care.
  2. 10 NYCRR 415.12(f)(1) – Quality of Care: Mental and Psychosocial Functioning
  3. 10 NYCRR 415.12(h) – Quality of Care: Accidents
  
- The facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on January 25, 2008. Deficiencies were found under:
  1. 10NYCRR 415.12 – Quality of Care

A review of operations for **Lakeview Rehabilitation and Care Center** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for the **Oak Hollow Nursing Center** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no enforcements.

A review of operations for the **Little Neck Nursing Home** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

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

## Financial Analysis

Operating Budget

Following is a summary of the submitted operating budget, presented in 2012 dollars, for the first year subsequent to change in ownership:

|                   |                  |
|-------------------|------------------|
| Revenues:         |                  |
| Medicaid          | \$5,714,200      |
| Medicare          | 3,432,700        |
| Private Pay/Other | <u>1,079,600</u> |
| Total             | \$10,226,500     |

|            |                   |
|------------|-------------------|
| Expenses:  |                   |
| Operating  | \$9,047,100       |
| Capital    | <u>621,653</u>    |
| Total      | \$9,668,753       |
| Net Income | <u>\$ 557,747</u> |

- Medicaid capital component is based on the return of and return on equity methodology.
- Medicare and private pay revenues are based on current payment rates.
- Overall utilization is projected at 90.3%.
- Utilization by payor source is anticipated as follows:

|               |       |
|---------------|-------|
| Medicaid      | 74.9% |
| Medicare      | 18.5% |
| Private/Other | 6.6%  |

- Breakeven utilization is projected at 85.4%.

#### Capability and Feasibility

There are no project costs associated with this application. There is no financial arrangement in regards to the transfer of ownership because Dr. Jacob Dimant is transferring 84% of his shares to the stated proposed members as a gift.

Working capital requirements are estimated at \$1,611,459, based on two months' of first year expenses; and will be satisfied from the facility's existing cash and receivables, and additional members' equity. Net cash and receivables (minus accounts payable) were \$764,892 at December 31, 2011, resulting in a need for additional equity of \$846,567 from the proposed members. Review of BFA Attachment A net worth of proposed shareholders, reveal sufficient resources to satisfy the working capital requirements for all three of the RHCF changes in ownership.

BFA Attachment B presents the pro-forma balance sheet of Lakeview Rehabilitation & Care Center. As shown, the facility will initiate operation with \$72,523 members' equity.

The submitted budget indicates that a net profit of approximately \$557,747 would be generated during the first year following change in ownership. The budget appears reasonable.

Review of BFA Attachment C, financial summary of Lakeview Rehabilitation & Center, indicates that the facility has experienced negative working capital and maintained positive equity positions, and generated net income of \$824,163 for the period shown. The facility experienced an average annual occupancy of 90.6% during 2009 to 2011. The negative working capital for 2009-2011 was due to loans to related parties that had become current. BFA Attachment D, the internal financial summary of Lakeview Rehabilitation & Center as of March 31, 2012, indicates that the facility has experienced negative working capital and maintained positive net equity and a net income from operations of \$17,289.

Review of BFA Attachment E, financial summary of Crown Nursing & Rehab Center, indicates that the facility has maintained positive working capital in 2010 and equity positions for 2009-2011, and generated average net income of \$990,073 for the period shown. The facility experienced an average annual occupancy of 92.6% during 2009 to 2011. The negative working capital for 2009 and 2011 is due to loans to related parties that had become current.

Review of BFA Attachment F, financial summary of Oak Hollow Nursing Center, indicates that the facility has experienced negative working capital and maintained positive equity positions, and experienced net losses from operations of \$456,299 and \$395,735 for 2011 and 2009, respectively. The facility experienced an average annual occupancy of 88.7% during 2009 to 2011.

The 2009 net loss from operations was due to a Trust litigation resulting in an increase for liability for workers compensation of approximately \$1 million and in 2011 there was an approximate write-off of \$500,000 in bad debts and a reduction of occupancy due to renovations. These were both non-recurring items. The negative working capital was due to loans to related parties that had become current.

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.**

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## Attachments

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|                  |  |
|------------------|--|
| BFA-Attachment A | Net Worth of Proposed Members  |
| BFA-Attachment B | Pro-forma Balance Sheet, Crown Nursing & Rehab Center  |
| BFA-Attachment C | Financial Summary, Lakeview Rehabilitation & Care Center                                       |
| BFA-Attachment D | Financial Summary, Lakeview Rehabilitation & Care Center Draft Financials as of March 31, 2012 |
| BFA-Attachment E | Financial Summary, Crown Nursing & Rehab Center  |
| BFA-Attachment F | Financial Summary, Oak Hollow Nursing Center   |

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 9th day of August, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer in ownership of 84% of Dr. Jacob Ditmant's shares as follows: 4% to Dr. Rose Dimant, 40% to Elliot A. Dimant and 40% to Kevin B. Teitler 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:

121174 E

FACILITY/APPLICANT:

Crest Hall Corp. d/b/a Lakeview Rehabilitation  
and Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Crest Hall Corp., acceptable to the Department of Health. [CSL]
2. Submission of a photocopy of the amended bylaws of Crest Hall Corp., 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  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237





# Public Health and Health Planning Council

Project # 121175-E  
**Crown Nursing Home Associates, Inc.**  
**d/b/a Crown Nursing and Rehabilitation Center**

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

**Program:** Residential Health Care Facility  
**Submitted:** March 30, 2012

## Executive Summary

### Description

Crown Nursing Home Associates, Inc. d/b/a Crown Nursing and Rehabilitation Center, an existing proprietary business corporation and 189-bed residential health care facility (RHCF) located at 3457 Nostrand Avenue, Brooklyn, is seeking approval for a transfer in ownership. Ownership of the facility before and after the requested change is as follows:

| <u>Before</u>    |                 | <u>After</u>     |                 |
|------------------|-----------------|------------------|-----------------|
| <u>Name</u>      | <u>Interest</u> | <u>Name</u>      | <u>Interest</u> |
| Dr. Jacob Dimant | 100%            | Dr. Jacob Dimant | 10%             |
|                  |                 | Dr. Rose Dimant  | 10%             |
|                  |                 | Elliot A. Dimant | 40%             |
|                  |                 | Kevin B. Teitler | 40%             |

Dr. Rose Dimant is Dr. Jacob Dimant's wife; Elliot A. Dimant is his son; and Kevin B. Teitler is his step-son. There will be no financial impact related to the transfer of ownership.

The proposed members also are concurrently seeking establishment approval to acquire ownership of Lakeview Rehabilitation and Care Center (CON #121174-E) and Oak Hollow Nursing Center (CON #121168-E). All three applications will be processed concurrently.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time

prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

DOH Recommendation  
 Contingent approval.

### Need Summary

As this application merely involves member changes to an existing established entity, no need review is required.

### Program Summary

No negative information has been received concerning the character and competence of the above applicants. No changes in the program or physical environment are proposed in this application.

### Financial Summary

There are no project costs associated with this application.

|         |                     |                   |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i>    | \$ 17,343,200     |
|         | <i>Expenses:</i>    | <u>17,167,739</u> |
|         | <i>Gain/(Loss):</i> | \$ 175,461        |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the amended bylaws of Crown Nursing Home Associates, Inc., acceptable to the Department. [CSL]

Council Action Date

**August 9, 2012.**

# Programmatic Analysis

## Facility Information

|                              | <i>Existing</i>   | <i>Proposed</i>   |
|------------------------------|---|---|
| <i>Facility Name</i>         | Crown Nursing and Rehabilitation Center   | Same  |
| <i>Address</i>               | 3457 Nostrand Avenue<br>Brooklyn, NY. 11229   | Same  |
| <i>RHCF Capacity</i>         | 189   | Same  |
| <i>ADHC Program Capacity</i> | N/A   | N/A   |
| <i>Type Of Operator</i>      | Corporation   | Corporation   |
| <i>Class Of Operator</i>     | Proprietary   | Proprietary   |
| <i>Operator</i>              | Crown Nursing Home Associates, Inc.<br><br><u>Members:</u><br>Dr. Jacob Dimant.....100% | Same<br><br><u>Managing Members:</u><br>Dr. Jacob Dimant.....10%<br>Dr. Rose Dimant.....10%<br><br><u>Members:</u><br>Elliot Dimant.....40%<br>Kevin Teitler.....40%<br><br><u>Member of Board</u><br>Menahem Dimant.....0% |

## Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 7/1/1989 – present |
| Lakeview Rehabilitation and Care Center | 1/1/1999 – present |
| Oak Hollow Nursing Center               | 1/1/1999 – present |
| Little Neck Nursing Home                | 1994 – 3/31/2011   |

- INDIVIDUAL BACKGROUND REVIEW:

**Dr. Rose Dimant** has disclosed ownership interest in the following Residential Health Care Facilities:

|   |                    |
|---|--------------------|
| Crown Nursing and Rehabilitation Center | 7/1/1989 – present |
| Lakeview Rehabilitation and Care Center | 1/1/1999 – present |
| Oak Hollow Nursing Center               | 1/1/1999 – present |

**Elliot Dimant** is NYS licensed attorney and is in good standing. He discloses no ownership interest in health facilities.

**Kevin Teitler** discloses no ownership interest in health facilities.

**Dr. Menahem Dimant** is a New York State licensed physician and is in good standing. He discloses ownership interest in the following Residential Health Care Facilities:

Crown Nursing and Rehabilitation Center  
Lakeview Rehabilitation and Care Center  
Oak Hollow Nursing Center  
Little Neck Nursing Home

1/1/2011 – present  
1/1/2011 – present  
1/1/2011 – present  
1994 – 3/31/2011

**Character and Competence – Analysis:**

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for the **Crown Nursing and Rehabilitation Center** for the period identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the **Lakeview Rehabilitation and Care Center** for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order for surveillance findings on August 25, 2006. Deficiencies were found under:
  1. 10 NYCRR 415.12 – Quality of Care.
  2. 10 NYCRR 415.12(f)(1) – Quality of Care: Mental and Psychosocial Functioning
  3. 10 NYCRR 415.12(h) – Quality of Care: Accidents
  
- The facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on January 25, 2008. Deficiencies were found under:
  1. 10NYCRR 415.12 – Quality of Care

A review of operations for **Lakeview Rehabilitation and Care Center** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for the **Oak Hollow Nursing Center** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no enforcements.

A review of operations for the **Little Neck Nursing Home** for the period identified above results in a conclusion of substantially consistent high level of care, since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application.

Recommendation

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

|                             |
|-----------------------------|
| <h2>Financial Analysis</h2> |
|-----------------------------|

Operating Budget

Following is a summary of the submitted operating budget, presented in 2012 dollars, for the first year subsequent to change in ownership:

|                   |                  |
|-------------------|------------------|
| Revenues:         |                  |
| Medicaid          | \$11,383,400     |
| Medicare          | 3,613,100        |
| Private Pay/Other | <u>2,346,700</u> |
| Total             | \$17,343,200     |

|                |                       |
|----------------|-----------------------|
| Expenses:      |                       |
| Operating      | \$16,293,900          |
| Capital        | <u>873,839</u>        |
| Total          | \$17,167,739          |
| <br>Net Income | <br><u>\$ 175,461</u> |

- Medicaid capital component is based on the return of and return on equity methodology.
- Medicare and private pay revenues are based on current payment rates.
- Overall utilization is projected at 91.5%.
- Utilization by payor source is anticipated as follows:

|               |       |
|---------------|-------|
| Medicaid      | 76.3% |
| Medicare      | 12.3% |
| Private/Other | 11.4% |

- Breakeven utilization is projected at 90.6%.

#### Capability and Feasibility

There are no project costs associated with this application. There is no financial arrangement in regards to the transfer of ownership because Dr. Jacob Dimant is transferring 90% of his shares to stated proposed members as a gift.

Working capital requirements are estimated at \$2,861,290, based on two months' of first year expenses; and will be satisfied from the facility's existing cash and receivables, and additional members' equity. Net cash and receivables (minus accounts payable) were \$644,454 at December 31, 2011, resulting in a need for additional equity of \$2,216,836 from the proposed members. Review of BFA Attachment A, net worth of proposed shareholders, reveal sufficient resources to satisfy the working capital requirements for all three of the RHCF changes in ownership.

BFA Attachment B presents the pro-forma balance sheet of Crown Nursing & Rehab Center. As shown, the facility will initiate operation with \$1,236,289 members' equity. The submitted budget indicates that a net profit of approximately \$175,461 would be generated during the first year following change in ownership. The budget appears reasonable.

Review of BFA Attachment C, financial summary of Crown Nursing & Rehab Center, indicates that the facility has maintained positive working capital in 2010 and equity positions for 2009-2011, and generated average net income of \$990,073 for the period shown. The facility experienced an average annual occupancy of 92.6% during 2009 to 2011. The negative working capital for 2009 and 2011 is due to loans to related parties which had become current. BFA Attachment D, the internal financial summary of Crown Nursing & Rehab Center as of March 31, 2012, indicates that the facility has experienced negative working capital and maintained positive net equity and a net income from operations of \$239,679.

Review of BFA Attachment E, financial summary of Lakeview Rehabilitation & Care Center, indicates that the facility has experienced negative working capital and maintained positive equity positions, and generated net income of \$824,163 for the period shown. The facility experienced an average annual occupancy of 90.6% during 2009 to 2011. The negative working capital for 2009-2011 was due to loans to related parties which had become current.

Review of BFA Attachment F, financial summary of Oak Hollow Nursing Center, indicates that the facility has experienced negative working capital and maintained positive equity positions, and experienced net losses from operations of \$456,299 and \$395,735 for 2011 and 2009, respectively. The facility experienced an average annual occupancy of 88.7% during 2009 to 2011.

The 2009 net loss from operations was due to a Trust litigation resulting in an increase for liability for workers compensation of approximately \$1 million and in 2011 there was an approximate write-off of \$500,000 in bad debts

and a reduction of occupancy due to renovations. These were both non-recurring items. The negative working capital was due to loans to related parties which had become current.

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.**

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## Attachments

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|                  |   |
|------------------|---|
| BFA-Attachment A | Net Worth of Proposed Members   |
| BFA-Attachment B | Pro-forma Balance Sheet, Crown Nursing & Rehab Center                                 |
| BFA-Attachment C | Financial Summary, Crown Nursing & Rehab Center                                       |
| BFA-Attachment D | Financial Summary, Crown Nursing & Rehab Center Draft Financials as of March 31, 2012 |
| BFA-Attachment E | Financial Summary, Lakeview Rehabilitation & Care Center                              |
| BFA-Attachment F | Financial Summary, Oak Hollow Nursing Center  |

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 9th day of August, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer in ownership of 90% of Dr. Jacob Ditmant's shares as follows: 10% to Dr. Rose Dimant, 40% to Elliot A. Dimant and 40% to Kevin B. Teitler, 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:

(121175 E

FACILITY/APPLICANT:

Crown Nursing Home Associates, Inc. d/b/a  
Crown Nursing and Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the amended bylaws of Crown Nursing Home Associates, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237





**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council (Council)  
**FROM:** James E. Dering, General Counsel *JED*  
**DATE:** July 9, 2012  
**SUBJECT:** Proposed Restated Certificate of Incorporation of  
The Methodist Homes for The Aging of the  
Wyoming Conference in the State of New York

---

Attached for the Council's review and approval is a photocopy of the proposed Restated Certificate of Incorporation of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York (Methodist Homes). Methodist Homes seeks approval from the Council to change its corporate name to "UMH NY Corp. (UMH)" which it believes is simpler, less cumbersome, less confusing and easier to use on a practical basis. Methodist Homes was originally formed under the Membership Corporation Law on September 25, 1958 and operates a nursing home, independent living facilities for seniors, adult care facilities and a home care agency basis.

The Council's approval for this name change is required pursuant to section 804(a)(ii) of the Not-for-Profit Corporation Law and Title 10 (Health) of the Official Compilation of the Codes, Rules and Regulations of the State of New York §§ 401.3(b)(2) and 600.11(a)(2).

In addition to the proposed Restated Certificate of Incorporation, also attached is a letter from UMH's attorney explaining in more detail the reason for the requested corporate name change.

The 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 Methodist Homes For The Aging of the  
Wyoming Conference in the State of New York**

---

**Under Section 805 of the  
Not-for-Profit Corporation Law**

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We, the undersigned, for the purpose of amending and restating the Certificate of Incorporation of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York 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 METHODIST HOMES FOR THE AGING OF THE WYOMING CONFERENCE IN THE STATE OF NEW YORK**, hereinafter referred to as the "Corporation". The name under which the Corporation was formed is "The Methodist Home for the Aged Fund of the Wyoming Conference".

**TWO:** The date its Certificate of Incorporation was filed with the Department of State was September 25, 1958 under the Membership 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 NY Corp." and change paragraph 1 of the Certificate of Incorporation to effect such change;
- (b) To delete reference in paragraph 5(C) of the Certificate of Incorporation to the former State Board of Social Welfare;
- (c) To delete paragraph 5(J) of the Certificate of Incorporation relating to the establishment, maintenance and operation of programs of enriched housing;
- (d) To renumber and re-letter paragraph 5(F) of the Certificate of Incorporation as paragraph 5(K); and
- (e) To omit paragraph 14 of the Certificate of Incorporation relating to the

indemnification of directors, officers and committee members.

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 NY CORP.**

---

**Under Section 402 of the  
Not-for-Profit Corporation Law**

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1. The name of the corporation is UMH NY Corp., hereinafter referred to as the "Corporation".
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a Type B corporation as defined in Section 201 of that law.
3. The County within the state in which the office of the Corporation is to be located is the County of Broome.
4. 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.
5. 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 solicit, collect, raise and receive money, funds and real and personal property for charitable, philanthropic and benevolent purposes, more particularly for the aged; to hold, invest, use, convert, expand, contribute, disburse and otherwise handle and dispose of same, and the income therefrom, for such purposes.
  - B. To receive and take by gift, grant, conveyance, devise or bequest, money, funds, or other real or personal property and to hold, administer, invest, use, convert, sell, distribute or otherwise dispose of such money, funds and property and the income therefrom, in accordance with the direction and intention of the donor of such money, funds and property, for

the charitable, philanthropic, and benevolent uses and purposes for which the corporation is formed.

C. To establish and maintain homes for the aged and retired persons and to provide for their social, religious, educational and physical welfare and for such purposes to acquire, hold and maintain real and personal property.

D. To purchase, acquire, hold and dispose of such property, real, personal and mixed as may be required for the transaction of its business or the conduct of its affairs subject to such limitations as are prescribed by statute.

E. To borrow money whether upon the security of any real property at any time held by the Corporation or otherwise.

F. To establish, operate and maintain a nursing home and health related facility at Elizabeth Church Manor, 863 Front Street, Binghamton, New York.

G. To establish, maintain and operate independent living facilities for senior citizens at Elizabeth Church Manor, 863 Front Street, Binghamton, New York.

H. To establish, maintain and operate independent living facilities for senior citizens at Hilltop Manor, 285 Deyo Hill Road, Johnson City, New York.

I. To establish, maintain and operate an adult home or homes, and establish, maintain and operate an Assisted Living Program.

J. To establish, maintain and operate a home care agency as authorized under New York Public Health Law Article 36.

K. To do all things necessary or proper in connection with or incidental to the foregoing purposes.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. The Corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

13. 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

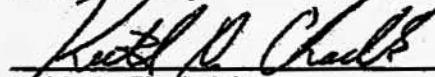
Code.

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.

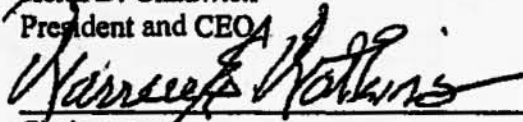
IN WITNESS WHEREOF, this certificate has been executed this 12<sup>th</sup> day of July, 2011, and is affirmed by the signers hereof as true under the penalties of perjury.

Dated: July 12<sup>th</sup>, 2011

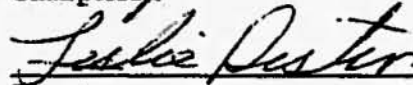
UMH NY Corp.



Keith D. Chadwick  
President and CEO



Chairperson



Secretary

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**THE METHODIST HOMES FOR THE AGING OF THE WYOMING CONFERENCE**  
**IN THE STATE OF NEW YORK**

**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

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Eugene E. Peckham †  
John J. Carlin  
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Howard M. Rittberg  
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June 4, 2012

*via hand delivery*

Michele A. Petruzzelli, Esq.  
Senior Attorney  
Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Room 2464  
Empire State Plaza  
Albany, NY 12237

**RE: Restated Certificate of Incorporation of The Methodist Homes for the Aging of the Wyoming Conference in the State of New York**

Dear Ms. Petruzzelli:

We represent The Methodist Homes for the Aging of the Wyoming Conference in the State of New York (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 to explain the nature of and reasons for the requested name change of the Corporation. This letter is intended to satisfy that request.

The current name of the Corporation is: "The Methodist Homes for the Aging of the Wyoming Conference in the State of New York."

The proposed name for the Corporation is: "UMH NY 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.

Main Office: 450 Plaza Drive • Vestal, NY 13850 • Phone: 607.763.9200  
Mailing Address: P.O. Box F-1706 • Binghamton, NY 13902-0106 • Fax: 607.763.9211





Michele A. Petruzzelli, Esq.

2

June 4, 2012

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 is an abbreviation for "United Methodist Homes" and recognizes that the Corporation has a connection with the United Methodist Church.

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


By: Paul R. Hoffmann

PRH/lab

## RESOLUTION

RESOLVED, that the Public Health Council, on this 9th day of August, 2012, approves the filing of the Restated Certificate of Incorporation of The Methodist Homes For The Aging of the Wyoming Conference in the State of New York dated July 12, 2011.

**New York State Department Of Health**  
**Memorandum**

**TO:** Public Health and Health Planning Council  
**FROM:** James E. Dering, General Counsel  JED  
**DATE:** June 28, 2012  
**SUBJECT:** Proposed Dissolution of The Falck Foundation, Inc.

The Falck Foundation, Inc. ("Falck Foundation") requests Public Health and Health Planning Council approval of its proposed Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

The Falck Foundation was formed in 1990 for the primary purpose of receiving and maintaining funds and property to be used for the benefit of Arnot Ogden Medical Center (hereinafter the "Medical Center"). The Falck Foundation seeks dissolution after a determination by the Falck Foundation's board of directors that continued commitment of financial and human resources to the operation of the Falck Foundation was unnecessary and inefficient, and that the assets held and managed by the Falck Foundation can be more effectively managed by the Medical Center itself. Pursuant to the Falck Foundation's Plan of Dissolution, if approved by the Attorney General, the Falck Foundation's remaining assets will be distributed to the Medical Center in accordance with the Falck Foundation's Certificate of Incorporation.

Attached are copies of the proposed Certificate of Dissolution, a letter from the Falck Foundation's attorney explaining the need for the proposed Dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking judicial approval of the Falck Foundation's Plan of Dissolution and distribution of assets.

The Certificate of Dissolution is in legally acceptable form.

Attachments

SAYLES & EVANS  
ATTORNEYS AT LAW  
ONE WEST CHURCH STREET  
ELMIRA, NEW YORK 14901

JAMES F. YOUNG  
JOHN R. ALEXANDER  
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CLOVER M. DRINKWATER  
STEVEN E. AGAN  
CONRAD R. WOLAN  
ANTHONY F. PAGANO  
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LAUREN E. JONES

(807) 734-2271  
FAX (807) 734-1754

aalsheimer@saylesevans.com

ALAN PARSONS  
LEWIS W. MORSE, JR.  
J. PHILIP HUNTER  
CYNTHIA S. HUTCHINSON  
OF COUNSEL

March 13, 2012

Ms. Colleen Frost, Executive Secretary  
Public Health and Health Planning Council  
New York State Department of Health  
Corning Tower  
Room 1441  
Albany, New York 12237

Re: Request for Public Health and Health Planning Council Approval of the  
Dissolution of The Falck Foundation, Inc.

Dear Ms. Frost:

I write on behalf of The Falck Foundation, Inc. (hereinafter, the "Foundation") to request that the Public Health and Health Planning Council (hereinafter, the "Council") approve the voluntary dissolution of the Foundation pursuant to section 650.1 of the regulations of the Department of Health.

The primary purpose of the Foundation has been to receive and maintain funds and property to be used for the benefit of Arnot Ogden Medical Center (hereinafter, the "Medical Center"). The Foundation's board of directors, after evaluating the Foundation's role in supporting the Medical Center, determined that the continued commitment of financial and human resources to the operation of the Foundation is unnecessary and inefficient and that the Foundation, therefore, should be dissolved. This determination reflects the directors' view that assets held and managed by the Foundation for the benefit of the Medical Center can be more effectively and efficiently managed by the Medical Center itself. Accordingly, the Plan of Dissolution and Distribution of Assets of the Foundation stipulates that the Medical Center receive all assets of the Foundation which remain after payment of the Foundation's liabilities.

Enclosed herewith please find the following items which are submitted for the Council's review in connection with its consideration of the Foundation's request:

- (1) Proposed Certificate of Dissolution of the Foundation;

- (2) Proposed Plan of Dissolution and Distribution of Assets of the Foundation; and
- (3) Proposed petition for judicial approval of the dissolution of the Foundation.

Should the Council require additional documentation or have any questions concerning this request for approval of the Foundation's voluntary dissolution, please do not hesitate to contact me at the address or telephone number set forth above. Once the Council completes its consideration of this matter and votes to approve the Foundation's dissolution, please provide evidence of such vote suitable for filing with the Supreme Court of the State of New York.

Thank you very much for your assistance.

Very truly yours,



Aaron Alsheimer

**CERTIFICATE OF DISSOLUTION**

**OF**

**THE FALCK FOUNDATION, INC.**

Under Section 1003 of the Not-for-Profit Corporation Law

I, Anthony J. Cooper, president of The Falck Foundation, Inc., hereby certify:

1. That the name of the corporation is The Falck Foundation, Inc.

2. That the Certificate of Incorporation of The Falck Foundation, Inc. was duly filed by the Department of State of the State of New York on the 20th day of March, 1990, and that a Certificate of Amendment of the Certificate of Incorporation of the Falck Foundation, Inc. was duly filed by the Department of State of the State of New York on the 15th day of October, 1990.

3. That the names, addresses, and titles of the officers and directors of the corporation are as follows:

| <u>Name</u>       | <u>Address</u>                                 | <u>Title</u>        |
|-------------------|--|---------------------|
| Anthony J. Cooper | 600 Roe Avenue<br>Elmira, New York 14905       | President, Director |
| Ronald J. Kintz   | 600 Roe Avenue<br>Elmira, New York 14905       | Treasurer, Director |
| John R. Alexander | 1 West Church Street<br>Elmira, New York 14901 | Secretary, Director |

4. That at the time of dissolution, the corporation is a Type B not-for-profit corporation.

5. That on the 26th day of September, 2011, the dissolution of the corporation was authorized by the unanimous vote of the Board of Directors, which vote resulted in the adoption of the corporation's Plan of Dissolution and Distribution of Assets.

6. That at the time of adoption of the corporation's Plan of Dissolution and Distribution of Assets pursuant to Not-for-Profit Corporation Law Section 1002, the corporation held assets legally required to be used for a particular purpose.

7. That on the \_\_\_\_ day of \_\_\_\_\_, 2012, the New York State Supreme Court, Chemung County, issued an Order Approving the Plan of Dissolution and Distribution of Assets. A copy of said Order is annexed hereto, pursuant to Not-for-Profit Corporation Law § 1003(8).

8. That the corporation hereby elects to dissolve.

9. That approval of the dissolution by the Public Health and Health Planning Council of the State of New York Department of Health is required, and that such approval is attached.

10. That the corporation has carried out the Plan of Dissolution and Distribution of Assets.

11. That prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General of the State of New York will be attached.

IN WITNESS WHEREOF, the undersigned has signed the Certificate of  
Dissolution of The Falck Foundation, Inc. this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Anthony J. Cooper  
President



**CERTIFICATE OF DISSOLUTION**

**OF**

**THE FALCK FOUNDATION, INC.**

Under Section 1003 of the Not-for-Profit Corporation Law

Filed by: Sayles & Evans  
Attorneys at Law  
One West Church Street  
Elmira, New York 14901

**PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS**  
**OF**  
**THE FALCK FOUNDATION, INC.**

The Board of Directors of The Falck Foundation, Inc. (hereinafter sometimes referred to as the "Corporation"), at a special meeting duly convened on the 26th day of September, 2011, pursuant to notice given in accordance with applicable law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, does hereby resolve that the Corporation be dissolved in accordance with the following plan:

1. There being no members of the Corporation, no vote of membership is required to approve the dissolution of the Corporation, and action of the Board of Directors is sufficient.
2. No approval of the dissolution of the Corporation is required by any government agency or officer.
3. As of August 31, 2011, the assets of the Corporation had a total value of \$1,861,351, which amount included the following:

|  |    |           |
|--|----|-----------|
| Cash   | \$ | 290,188   |
| Money Market Account (Centric Bank, Harrisburg, Pennsylvania)  | \$ | 256,162   |
| Money Market Account (Community Bank, N.A., Elmira, New York)  | \$ | 254,453   |
| Investments (various mutual funds and separately-managed accounts, managed under the direction of Prime, Buchholz & Associates, Inc., Portsmouth, New Hampshire) | \$ | 1,060,548 |

Amounts held in the Corporation's money market accounts at Centric Bank and Community Bank, N.A. are required to be used exclusively for repayment of the balance owed on a certain note given by the Corporation to Arnot Ogden Medical Center.
4. The Corporation has liabilities of \$510,615, which amount represents the balance owed on a note give by the Corporation to Arnot Ogden Medical Center.
5. The assets of the Corporation remaining after payment of the aforementioned liabilities shall be distributed to Arnot Ogden Medical Center, as required under Paragraph 2 of the Corporation's Certificate of Incorporation. Arnot Ogden Medical Center is a charitable organization exempt from taxation pursuant to federal and state laws and engaged in activities substantially similar to those of the Corporation.

Annexed hereto and made a part hereof are the following documents pertaining to Arnot Ogden Medical Center:

Exhibit 1 – Copies of the Certificate of Incorporation and the By-laws of the organization, together with any and all amendments thereto;

Exhibit 2 – Copies of the last three annual financial reports of the organization;

Exhibit 3 – Sworn affidavit from a director and officer of the organization stating the purposes of the organization and that the organization is currently exempt from federal income taxation;


Exhibit 4 – Copy of the Internal Revenue Service letter of determination that the organization is exempt from taxation.

6. The Corporation shall carry out this plan as expeditiously as possible, but in any event within 270 days from the date this plan is approved by a Justice of the Supreme Court of the State of New York, or such additional or extended period of time not less than 30 days nor more than one year as the Attorney General of the State of New York may allow upon a showing of good cause by the Corporation that the plan cannot be carried out within the prescribed time.
7. After the distribution of the Corporation's assets within the time period described in Paragraph 6 hereof, a certificate of dissolution shall be executed, and all approvals required under New York Not-for-Profit Corporation Law § 1002 shall be obtained prior to filing the certificate of dissolution with the Department of State of the State of New York as required by law.

#### CERTIFICATION

I, John R. Alexander, Secretary of The Falck Foundation, Inc., hereby certify that a special meeting of the Board of Directors of the Corporation was held on the 26th day of September, 2011, at Arnot Ogden Medical Center, 600 Roe Avenue, Elmira, New York, New York, and the within Plan of Dissolution and Distribution of Assets was duly submitted and approved by a unanimous vote of the Directors.

Dated: November 16, 2011

  
\_\_\_\_\_  
John R. Alexander  
Secretary

STATE OF NEW YORK  
SUPREME COURT, COUNTY OF CHEMUNG

-----X  
In the Matter of the Application of

THE FALCK FOUNDATION, INC.

**VERIFIED PETITION**

For an Order Approving Its Plan of Dissolution and  
Distribution of Assets Pursuant to Section 1002 of the  
Not-for-Profit Corporation Law.

Index No.:  
RJI No.:

-----X  
  
Petitioner, The Falck Foundation, Inc., by its Secretary, John R. Alexander,  
hereby respectfully alleges:

1. That The Falck Foundation, Inc. (hereinafter referred to as the  
"Corporation"), having a principal address of One West Church Street, Elmira, New York  
14901, is a corporation duly organized and existing under and by virtue of the Not-for-Profit  
Corporation Law of the State of New York, its Certificate of Incorporation having been duly  
filed by the Department of State on the 20th day of March, 1990. A copy of said Certificate of  
Incorporation is annexed hereto as Exhibit A.

2. That a Certificate of Amendment of the Certificate of Incorporation of the  
Corporation was duly filed by the Department of State on the 15th day of October, 1990. A copy  
of said Certificate of Amendment is annexed hereto as Exhibit B.

2. That the Corporation is a Type B corporation.

3. That the purposes of the Corporation, as set forth in Paragraph 2 of its Certificate of Incorporation, as amended, are as follows:

To solicit, receive and maintain a fund or funds of property, both real and personal, and to devote the use of the real property to, and apply the income therefrom and the principal thereof exclusively for, the benefit of the Arnot-Ogden Memorial Hospital, a New York not-for-profit corporation, and its corporate successor or successors; to acquire, purchase and construct buildings, fixtures, leasehold improvements and other facilities and make them available by lease, gift or otherwise to the said Arnot-Ogden Memorial Hospital. Nothing contained in the Certificate of Incorporation shall authorize the corporation to establish or operate a hospital or to provide hospital service or health related service, or to operate a home health agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provide for by Articles 28, 36, 40 and 44 respectively, of the Public Health Law, or to carry on any of the activities contained in Subsections (b) through (n), and (p) through (s), and (u) of Section 404 of the Not-for-Profit Corporation Law.

4. That the names, titles, and addresses of the officers and directors of the Corporation are as follows:

| <u>Name</u>       | <u>Title</u>        | <u>Address</u>                                 |
|-------------------|---------------------|--|
| Anthony J. Cooper | President, Director | 600 Roe Avenue<br>Elmira, New York 14905       |
| Ronald J. Kintz   | Treasurer, Director | 600 Roe Avenue<br>Elmira, New York 14905       |
| John R. Alexander | Secretary, Director | 1 West Church Street<br>Elmira, New York 14901 |

5. That the assets of the Corporation as of August 31, 2011, had a total value of \$1,861,351, which amount included: (a) cash deposits totaling \$290,188; (b) a money market account at Centric Bank in Harrisburg, Pennsylvania, having a balance of \$256,162; (c) a money market account at Community Bank, N.A. in Elmira, New York, having a balance of \$254,453; and (d) various mutual funds and separately-managed investment accounts invested under the

direction of Prime, Buchholz & Associates, Inc. of Portsmouth, New Hampshire, having a total market value of \$1,060,548.

6. That the liabilities of the Corporation as of August 31, 2011 had a total value of \$510,615, which amount consists entirely of the balance owed on a note given by the Corporation to Arnot Ogden Medical Center.

7. That the dissolution of the Corporation is contemplated, and that the assets of the Corporation are to be distributed in accordance with the Plan of Dissolution and Distribution of Assets adopted by the Corporation's Board of Directors. A copy of said Plan is annexed hereto as Exhibit C.

8. That the Corporation is required to use the amounts held in its money market accounts at Centric Bank and Community Bank, N.A. exclusively for repayment of the balance owed on the aforementioned note given by the Corporation to Arnot Ogden Medical Center.

9. That the Board of Directors of the Corporation wishes to dissolve the Corporation for the following particular reason: the continued commitment of financial and human resources to the operation of the Corporation is unnecessary and inefficient, as the assets which are presently held and managed by the Corporation for the benefit of Arnot Ogden Medical Center can be held and managed directly by Arnot Ogden Medical Center.

10. That at a special meeting of the Board of Directors of the Corporation duly convened on September 26, 2011, at which meeting a quorum was present, the Board unanimously adopted the aforementioned Plan of Dissolution and Distribution of Assets and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-

for-Profit Corporation Law.

11. That the Corporation has no members, and that the adoption of the Plan of Dissolution and Distribution of Assets by the Board of Directors resulted in the approval of said Plan.

12. That Arnot Ogden Medical Center has agreed to accept the assets of the Corporation and to use and distribute such assets in accordance with the Plan of Dissolution and Distribution of Assets and as may be ordered and directed by the Court.

13. That Arnot Ogden Medical Center is a charitable organization engaged in activities substantially similar to the Corporation's activities and is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

14. That the following documents pertaining to Arnot Ogden Medical Center are attached as exhibits to the Plan of Dissolution and Distribution of Assets: (a) Certificate of Incorporation and By-Laws, together with any and all amendments thereto; (b) financial reports for each of the last three years; (c) Internal Revenue Service letter of determination that the organization is exempt from taxation; and (d) an affidavit from an officer of the organization stating the purposes of the organization and that it is currently exempt from taxation.

15. That a copy of this Petition and the aforementioned Plan of Dissolution and Distribution of Assets have been filed with the Attorney General of the State of New York.

16. That no government agency or officer is required to approve the dissolution of the Corporation.

17. That no previous application has been made for the relief requested herein.


WHEREFORE, Petitioner respectfully requests that this Court issue an Order:

(1) Approving the aforementioned Plan of Dissolution and Distribution of Assets of The Falck Foundation, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1002.

(2) Granting such other and further relief as the Court deems proper.

Dated: November 16, 2011

THE FALCK FOUNDATION, INC.

By   
John R. Alexander  
Secretary

Dated: November 16, 2011

SAYLES & EVANS



Aaron T. Alsheimer, of counsel  
Attorneys for Petitioner  
One West Church Street  
Elmira, New York 14901  
Telephone: (607) 734-2271



VERIFICATION

State of New York )  
: ss.  
County of Chemung )

John R. Alexander, being duly sworn, deposes and says that he is the person named in the foregoing Petition; that he has read the foregoing Petition and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes to be true.

*John R. Alexander*

Sworn to before me

this 16 day of November, 2011.

*Aaron T. Alsheimer*  
Notary Public.

AARON T. ALSHEIMER  
Notary Public, State of New York  
Steuben County No. 02AL6183547  
Commission Expires March 17, 2012

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of August, 2012, approves the filing of the Certificate of Dissolution of The Falck Foundation, Inc. dated as attached.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council  
**FROM:** James E. Dering, General Counsel *JED*  
**DATE:** July 9, 2012  
**SUBJECT:** Proposed Dissolution of St. Clare Manor of Lockport, N.Y.

---

St. Clare Manor of Lockport, N.Y. requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

St. Clare Manor of Lockport, N.Y. was formed in 1961 under the Membership Corporations Law and operated a residential health care center in Niagara County until 2003, when St. Clare Manor of Lockport, N.Y. ceased operations and surrendered its operating certificates to the Department. Therefore, there is no longer a reason for St. Clare Manor of Lockport, N.Y. to exist. Pursuant to St. Clare Manor of Lockport, N.Y.'s Plan of Dissolution, if approved by the Supreme Court, St. Clare Manor of Lockport, N.Y.'s liabilities, if any, will be paid by Catholic Health System, Inc., the sole member of the corporation.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from St. Clare Manor of Lockport, N.Y.'s attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of St. Clare Manor of Lockport, N.Y.'s Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments



**Phillips Lytle LLP**

**Via FedEx**

May 10, 2012

New York State Department of Health  
Division of Legal Affairs  
Bureau of House Counsel  
24th Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12237

RECEIVED

MAY 11 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Attn: David W. Quist, Associate Attorney

Re: Request for Approval of Voluntary Dissolution of St. Clare Manor of Lockport,  
N.Y. (the "Corporation")

Dear Mr. Quist:

We represent the above-referenced Corporation in connection with its proposed voluntary dissolution under the New York State Not-for-Profit Corporation Law. The Corporation requests the approval of the New York State Public Health and Health Planning Council (the "Council") to voluntarily dissolve. Please note that the enclosed documents have been updated to incorporate the comments contained in your letter dated March 5, 2012, and, per our telephone discussion, have been revised to change the entity to which assets are proposed to be distributed upon dissolution.

We offer the following information regarding the Corporation, its public need for dissolution and the proposed disposition of its assets: the Corporation was incorporated on March 2, 1961 but no longer undertakes any substantive activity, voluntarily returned its operating certificate (Certificate #3101304N) to operate as a nursing home to the NYS Department of Health on November 19, 2003 and has no outstanding claims against it nor any liabilities. As such, the Corporation's board of directors and its member (with ratification by its member's corporate members and religious sponsors) have determined that there is no reason to continue the Corporation's existence and that any remaining assets could be better utilized by and should be transferred to the Corporation's sole member, Catholic Health System, Inc. upon dissolution. As discussed, the Corporation had initially determined that its affiliate, St. Francis Home of Williamsville should be the recipient of any remaining assets, but because of further internal considerations since the date of its initial

ATTORNEYS AT LAW

SHARON PRISK AZURIN, PARTNER DIRECT 716 847 7088 SAZURIN@PHILLIPSLYTLLE.COM

3400 HSBC CENTER BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100  
BUFFALO ALBANY CHAUTAUQUA GARDEN CITY NEW YORK ROCHESTER WWW.PHILLIPSLYTLLE.COM



New York State Department of Health  
Page 2

May 10, 2012

application to the Council for approval to dissolve, the Corporation has determined that the assets are more appropriately transferred to Catholic Health System, Inc.

Enclosed are the following documents we understand are required by the Council to consider the requested approval of the Corporation's dissolution and distribution of assets:

1. The proposed executed Certificate of Dissolution;
2. The proposed Amended and Restated Plan of Dissolution and Distribution of Assets; and
3. The proposed Verified Petition for Order Approving Plan of Dissolution and Distribution of Assets.

Please do not hesitate to contact me should the Council's office require any additional information or documentation in connection with the Corporation's request for approval of voluntary dissolution.

We appreciate your assistance and the Council's consideration of this matter.

Very truly yours,

Phillips Lytle LLP

By 

Sharon Prise Azurin

SPAs

Enclosures

Doc # 01-2570623.1

cc: Nancy J. Sheehan RN, Esq. (w/o encls.)  
Robert M. Greene, Esq. (w/o encls.)

## CERTIFICATE OF DISSOLUTION

Certificate of Dissolution  
of St. Clare Manor of Lockport, N.Y.  
Under Section 1003 of the Not-for-Profit Corporation Law

I, Christine Kluckhohn, the President & CEO of St. Clare Manor of Lockport, N.Y. (the "Corporation") hereby certify:

1. The name of this Corporation is St. Clare Manor of Lockport, N.Y.
2. The Certificate of Incorporation of the Corporation was filed with the New York State Department of State on the 2nd day of March, 1961.
3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

| <u>Name</u>         | <u>Title(s)</u>         | <u>Address</u>  |
|---------------------|-------------------------|---|
| Edward Flynn        | Director                | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President  | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director                | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director                | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |
| Mark Meyerhofer     | Director                | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210 |
| James Millard       | Director                | Kenmore Mercy Hospital<br>2950 Elmwood Avenue<br>Kenmore, New York 14217                    |
| Robert Nasso        | Director and Vice Chair | Rotenberg & Company LLP<br>1870 Winton Road South<br>Rochester, New York 14618              |

|                              |                        |  |
|------------------------------|------------------------|--|
| Sherry Pomeroy               | Director               | University at Buffalo, SUNY<br>School of Nursing<br>323 Wende Hall 304E<br>3435 Main Street<br>Buffalo, New York 14214 |
| Mark A. Sullivan             | Director and Secretary | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214                                 |
| Nancy Truver                 | Director               | 3525 Carnoustie Drive<br>Martinez, Georgia 30907   |
| Sr. Mary Anne Weldon, R.S.M. | Director               | Sullivan House<br>688 Ridge Road<br>Lackawanna, New York 14218   |
| Monsignor Robert E. Zapfel   | Director and Chair     | St. Leo the Great<br>885 Sweet Home Road<br>Amherst, New York 14226  |

4. At the time of dissolution the Corporation is a Type B New York not-for-profit corporation.
5. At the time of authorization of the Corporation's Amended and Restated Plan of Dissolution and Distribution of Assets pursuant to N-PCL §1002, the Corporation held no assets legally required to be used for a particular purpose.
6. The Corporation elects to dissolve.
7. An Amended and Restated Plan of Dissolution and Distribution of Assets was authorized by required vote of the Board of Directors of the Corporation on March 15, 2012 and approved by the sole member of the Corporation by required vote on March 29, 2012.
8. On \_\_\_\_\_, 20\_\_, the New York State Supreme Court, Erie County, issued an Order Approving the Plan of Dissolution and Distribution of Assets. Prior to the filing of this Certificate of Dissolution with the Department of State, a copy of the Order will be annexed hereto, pursuant to N-PCL § 1003(a)(8).
9. Approval of the dissolution of the Corporation is required by the New York State Public Health and Health Planning Council and a copy of such approval will be attached prior to the filing of this Certificate of Dissolution with the Department of State.
10. The Corporation has carried out the Amended and Restated Plan of Dissolution and Distribution of Assets.

11. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of St. Clare Manor of Lockport, N.Y. this 26th day of April, 2012.



(Signature)

Name of Officer: Christine Kluckhohn

Title: President & CEO



**Certificate of Dissolution**

**of**

**St. Clare Manor of Lockport, N.Y.**

**Under Section 1003 of the Not-for-Profit Corporation Law**

**Filed by:**

**Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203**

**AMENDED AND RESTATED PLAN OF DISSOLUTION  
AND DISTRIBUTION OF ASSETS**

**Amended and Restated Plan of Dissolution and Distribution of Assets  
of St. Clare Manor of Lockport, N.Y., a New York  
Not-for-Profit Corporation**

The Board of Directors of St. Clare Manor of Lockport, N.Y. (the "Corporation"), at a meeting duly convened on the 15th day of March, 2012, pursuant to notice given in accordance with the applicable law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation, and the Board of Directors having adopted, by required vote, a plan for a voluntary dissolution of the Corporation, does hereby recommend to the sole member of the Corporation for authorization that the Corporation be dissolved in accordance with the following plan:

1. Upon resolution of the Board of Directors adopting this plan of dissolution, the Board of Directors shall submit the plan of dissolution to a vote of the sole member of the Corporation for approval.
2. Approval of the dissolution of the Corporation is required to be obtained by the New York State Public Health and Health Planning Council, and a copy of such approval is attached.
3. The Corporation has assets. Such assets are not legally required to be used for any particular purpose. The Corporation's assets consist of cash in the approximate amount of \$252,000 as of February 29, 2012.
4. The assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc. The assets shall be used for purposes related to the provision and enhancement of long term health care programs and services consistent with the mission of providing care to elderly and disabled persons.

The following documents of Catholic Health System, Inc. are each attached to this Plan: the governing instrument and any amendments thereto, the financial reports for the last three years, the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in "The Official Catholic Directory", and a sworn affidavit from a director and officer of Catholic Health System, Inc. stating the purposes of the organization and that it is currently exempt from federal income taxation.

5. The Corporation has no liabilities. Any liabilities related to the dissolution procedure, including accounting and legal fees estimated at \$8,500, shall be incurred and payable by Catholic Health System, Inc., the Corporation's sole member.
6. Within two hundred seventy days after the date that an Order Approving Plan of Dissolution and Distribution of Assets is signed by the Court, the Corporation shall carry out this Plan.

7. This Amended and Restated Plan of Dissolution and Distribution of Assets amends and restates in its entirety the Plan of Dissolution and Distribution of Assets approved by the Board of Directors of the Corporation at a meeting held on July 21, 2011.

**Certification**

I, \_\_\_\_\_, Secretary of the St. Clare Manor of Lockport, N.Y. hereby certify under penalties of perjury that a meeting of the Board of Directors of the Corporation was duly held at \_\_\_\_\_ on March 15, 2012 at \_\_\_\_\_ and the within Plan of Dissolution was duly submitted and passed by the required vote of the Directors, and that the sole member of the Corporation approved the Plan of Dissolution and Distribution of Assets.

\_\_\_\_\_  
(Signature)  
(Name of Officer & Title)  
Dated the \_\_\_\_ day of  
\_\_\_\_\_, 2012

Doc # 01-2524901.2

**VERIFIED PETITION FOR ORDER APPROVING AMENDED AND RESTATED  
PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

----- X  
In the Matter of the Application of :  
St. Clare Manor of Lockport, N.Y. : VERIFIED PETITION  
For Approval of Amended and Restated Plan of :  
Dissolution and Distribution of Assets pursuant to : Index No.  
Section 1002 of the Not-for-Profit :  
Corporation Law. :  
----- X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

Petitioner, St. Clare Manor of Lockport, N.Y. by \_\_\_\_\_ of St. Clare Manor  
of Lockport, N.Y. for its Verified Petition herein respectfully alleges:

1. St. Clare Manor of Lockport, N.Y. (the "Corporation"), whose principal address is  
c/o Catholic Health System, Inc., 2121 Main Street, Suite 300, Buffalo, New York 14214, was  
incorporated pursuant to New York's Membership Corporations Law on March 2, 1961. A copy  
of the Certificate of Incorporation and any amendments are attached as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and directors are as follows:

| <u>Name</u>         | <u>Title(s)</u>        | <u>Address</u>  |
|---------------------|------------------------|---|
| Edward Flynn        | Director               | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director               | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director               | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |
| Mark Meyerhofer     | Director               | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210 |

|                                     |                                |   |
|-------------------------------------|--------------------------------|---|
| <b>James Millard</b>                | <b>Director</b>                | <b>Kenmore Mercy Hospital<br/>2950 Elmwood Avenue<br/>Kenmore, New York 14217</b>   |
| <b>Robert Nasso</b>                 | <b>Director and Vice Chair</b> | <b>Rotenberg &amp; Company LLP<br/>1870 Winton Road South<br/>Rochester, New York 14618</b>                                       |
| <b>Sherry Pomeroy</b>               | <b>Director</b>                | <b>University at Buffalo, SUNY<br/>School of Nursing<br/>323 Wende Hall 304E<br/>3435 Main Street<br/>Buffalo, New York 14214</b> |
| <b>Mark A. Sullivan</b>             | <b>Director and Secretary</b>  | <b>Catholic Health System, Inc.<br/>2121 Main Street, Suite 300<br/>Buffalo, New York 14214</b>                                   |
| <b>Nancy Truver</b>                 | <b>Director</b>                | <b>3525 Carnoustie Drive<br/>Martinez, Georgia 30907</b>  |
| <b>Sr. Mary Anne Weldon, R.S.M.</b> | <b>Director</b>                | <b>Sullivan House<br/>688 Ridge Road<br/>Lackawanna, New York 14218</b>   |
| <b>Monsignor Robert E. Zapfel</b>   | <b>Director and Chair</b>      | <b>St. Leo the Great<br/>885 Sweet Home Road<br/>Amherst, New York 14226</b>  |

3. The purposes for which the Corporation was organized are as follows: "To establish and maintain a home to provide lodging, board and nursing care for sick, invalid, infirm, aged, disabled and convalescent persons under medical supervision."

4. The Corporation is a Type B corporation.

5. The assets of the Corporation and their fair market values are as follows: Cash in the approximate amount of \$252,000 as of February 29, 2012.

6. The Corporation's liabilities are as follows: The Corporation has no liabilities. Any liabilities related to the dissolution procedure shall be incurred and payable by the Corporation's sole member.

7. The Corporation assets are not legally required to be used for any particular purpose.

8. Dissolution of the Corporation is contemplated and assets are to be distributed in accordance with the Amended and Restated Plan of Dissolution and Distribution of Assets.

9. The assets of the Corporation subject to any unpaid liability of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc.

The following documents of Catholic Health System, Inc. are attached to the Amended and Restated Plan of Dissolution and Distribution of Assets, which is an exhibit to the Petition:

- the governing instrument, with all amendments;
- financial reports for the last three years;
- the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in "The Official Catholic Directory"; and
- an affidavit from a director and officer thereof stating the purposes of the organization and that it is currently exempt from taxation.

10. A meeting of the Board of Directors of the Corporation was held pursuant to duly given notice on March 15, 2012 at which a resolution was duly passed by required vote of the directors of the Corporation adopting an Amended and Restated Plan of Dissolution and Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Amended and Restated Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as an Exhibit B.

11. The Amended and Restated Plan of Dissolution and Distribution of Assets adopted by the Board of Directors was submitted to a vote of the sole member of the Corporation as required by N-PCL § 1002(a). The Amended and Restated Plan of Dissolution and Distribution of Assets was approved by the sole member by required vote at a meeting of the member held on March 29, 2012. A copy of the resolutions of the member approving the Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as an Exhibit C.

12. Approval of the New York State Public Health and Health Planning Council is required, and a copy of such approval is attached as Exhibit D.

13. No previous application for approval of the Amended and Restated Plan of Dissolution and Distribution of Assets of the Corporation has been made.

WHEREFORE, petitioner requests that the Court grant an Order Approving the Amended and Restated Plan of Dissolution and Distribution of Assets of St. Clare Manor of Lockport, N.Y., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this \_\_\_\_ day of \_\_\_\_\_, 2012 by

\_\_\_\_\_  
(Signature)  
Name of Officer: \_\_\_\_\_  
Title: \_\_\_\_\_

**Verification**

STATE OF NEW YORK     )  
  :SS.:  
COUNTY OF ERIE         )

\_\_\_\_\_, being duly sworn, deposes and says:

I am the \_\_\_\_\_ of St. Clare Manor of Lockport, N.Y., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

\_\_\_\_\_  
(Signature)

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

Doc # 01-2471795.3

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of August, 2012, approves the filing of the Certificate of Dissolution of St. Clare Manor of Lockport, N.Y., dated April 26, 2012.






**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:** July 9, 2012

**SUBJECT:** Proposed Dissolution of St. Joseph's Manor of Olean, N.Y.

---

St. Joseph's Manor of Olean, N.Y. ("St. Joseph's") requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

St. Joseph's was formed in 1961 under the Membership Corporations Law and operated a residential health care center in Cattaraugus County until 2006, when St. Joseph's ceased operations and surrendered its operating certificate to the Department. Therefore, there is no longer a reason for St. Joseph's to exist. Pursuant to St. Joseph's Plan of Dissolution, if approved by the Supreme Court, St. Joseph's liabilities, if any, will be paid by Catholic Health System, Inc., the sole member of the corporation.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from St. Joseph's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of St. Joseph's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments



**Phillips Lytle LLP**

Via FedEx

May 10, 2012

New York State Department of Health  
Division of Legal Affairs  
Bureau of House Counsel  
24th Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12237

RECEIVED

MAY 11 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Attn: Michael Stone, Associate Attorney

Re: Request for Approval of Voluntary Dissolution of St. Joseph's Manor of Olean,  
N.Y. (the "Corporation")

Dear Mr. Stone:

We represent the above-referenced Corporation in connection with its proposed voluntary dissolution under the New York State Not-for-Profit Corporation Law. The Corporation requests the approval of the New York State Public Health and Health Planning Council (the "Council") to voluntarily dissolve. Please note that the enclosed documents have been updated to incorporate David Quist's comments contained in his letter to me dated March 5, 2012 regarding a related entity, and as we discussed, have been revised to change the entity to which assets are proposed to be distributed upon dissolution.

We offer the following information regarding the Corporation, its public need for dissolution and the proposed disposition of its assets: the Corporation was incorporated on June 14, 1961 but no longer undertakes any substantive activity, voluntarily returned its operating certificate (Certificate #0401301N) to operate as a nursing home to the NYS Department of Health on August 18, 2006 and has no outstanding claims against it nor any liabilities. As such, the Corporation's board of directors and its member (with ratification by its member's corporate members and religious sponsors) have determined that there is no reason to continue the Corporation's existence and that any remaining assets could be better utilized by and should be transferred to the Corporation's sole member, Catholic Health System, Inc. upon dissolution. As discussed, the Corporation had initially determined that its affiliate, St. Francis Home of Williamsville should be the recipient of any remaining assets, but because of further internal considerations since the date of its initial

ATTORNEYS AT LAW

SHARON PRISE AZURIN, PARTNER DIRECT 716 847 7088 SAZURIN@PHILLIPSLYTLLE.COM

3400 HSBC CENTER BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100  
BUFFALO ALBANY CHAUTAUQUA GARDEN CITY NEW YORK ROCHESTER WWW.PHILLIPSLYTLLE.COM



New York State Department of Health  
Page 2

May 10, 2012

application to the Council for approval to dissolve, the Corporation has determined that the assets are more appropriately transferred to Catholic Health System, Inc.

Enclosed are the following documents we understand are required by the Council to consider the requested approval of the Corporation's dissolution and distribution of assets:

1. The proposed executed Certificate of Dissolution;
2. The proposed Amended and Restated Plan of Dissolution and Distribution of Assets; and
3. The proposed Verified Petition for Order Approving Plan of Dissolution and Distribution of Assets.

Please do not hesitate to contact me should the Council's office require any additional information or documentation in connection with the Corporation's request for approval of voluntary dissolution.

We appreciate your assistance and the Council's consideration of this matter.

Very truly yours,

Phillips Lytle LLP

By 

Sharon Prise Azurin

SPAls

Enclosures

Doc # 01-2570824.2

cc: Nancy J. Sheehan RN, Esq. (w/o encls.)  
Robert M. Greene, Esq. (w/o encls.)

## CERTIFICATE OF DISSOLUTION

Certificate of Dissolution  
of St. Joseph's Manor of Olean, N.Y.  
Under Section 1003 of the Not-for-Profit Corporation Law

I, Christine Kluckhohn, the President & CEO of St. Joseph's Manor of Olean, N.Y. (the "Corporation") hereby certify:

1. The name of this Corporation is St. Joseph's Manor of Olean, N.Y.
2. The Certificate of Incorporation of the Corporation was filed with the New York State Department of State on the 14th day of June, 1961 and the Restated Certificate of Incorporation of the Corporation was filed with the New York State Department of State on the 7th day of April, 2006.
3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

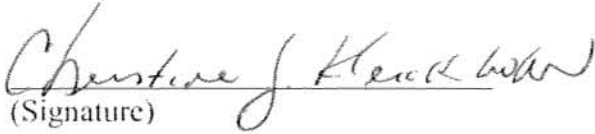
| <u>Name</u>         | <u>Title(s)</u>         | <u>Address</u>  |
|---------------------|-------------------------|---|
| Edward Flynn        | Director                | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President  | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director                | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director                | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |
| Mark Meyerhofer     | Director                | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210 |
| James Millard       | Director                | Kenmore Mercy Hospital<br>2950 Elmwood Avenue<br>Kenmore, New York 14217                    |
| Robert Nasso        | Director and Vice Chair | Rotenberg & Company LLP<br>1870 Winton Road South<br>Rochester, New York 14618              |

|                              |                        |  |
|------------------------------|------------------------|--|
| Sherry Pomeroy               | Director               | University at Buffalo, SUNY<br>School of Nursing<br>323 Wende Hall 304E<br>3435 Main Street<br>Buffalo, New York 14214 |
| Mark A. Sullivan             | Director and Secretary | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214                                 |
| Nancy Truver                 | Director               | 3525 Cornoustie Drive<br>Martinez, Georgia 30907   |
| Sr. Mary Anne Weldon, R.S.M. | Director               | Sullivan House<br>688 Ridge Road<br>Lackawanna, New York 14218   |
| Monsignor Robert E. Zapfel   | Director and Chair     | St. Leo the Great<br>885 Sweet Home Road<br>Amherst, New York 14226  |

4. At the time of dissolution the Corporation is a Type B New York not-for-profit corporation.
5. At the time of authorization of the Corporation's Amended and Restated Plan of Dissolution and Distribution of Assets pursuant to N-PCL §1002, the Corporation held no assets legally required to be used for a particular purpose.
6. The Corporation elects to dissolve.
7. An Amended and Restated Plan of Dissolution and Distribution of Assets was authorized by required vote of the Board of Directors of the Corporation on March 15, 2012 and approved by the sole member of the Corporation by required vote on March 29, 2012.
8. On \_\_\_\_\_, 20\_\_, the New York State Supreme Court, Erie County, issued an Order Approving the Plan of Dissolution and Distribution of Assets. Prior to the filing of this Certificate of Dissolution with the Department of State, a copy of the Order will be annexed hereto, pursuant to N-PCL § 1003(a)(8).
9. Approval of the dissolution of the Corporation is required by the New York State Public Health and Health Planning Council and a copy of such approval will be attached prior to the filing of this Certificate of Dissolution with the Department of State.
10. The Corporation has carried out the Amended and Restated Plan of Dissolution and Distribution of Assets.

11. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of St. Joseph's Manor of Olean, N.Y. this 26<sup>th</sup> day of April, 2012.



(Signature)

Name of Officer: Christine Kluckholm  
Title: President & CEO

**Certificate of Dissolution**

**of**

**St. Joseph's Manor of Olean, N.Y.**

**Under Section 1003 of the Not-for-Profit Corporation Law**

Filed by:

Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203

**AMENDED AND RESTATED PLAN OF DISSOLUTION  
AND DISTRIBUTION OF ASSETS**

Amended and Restated Plan of Dissolution and Distribution of Assets  
of St. Joseph's Manor of Olean, N.Y., a New York  
Not-for-Profit Corporation

The Board of Directors of St. Joseph's Manor of Olean, N.Y. (the "Corporation"), at a meeting duly convened on the 15th day of March, 2012, pursuant to notice given in accordance with the applicable law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation, and the Board of Directors having adopted, by required vote, a plan for a voluntary dissolution of the Corporation, does hereby recommend to the sole member of the Corporation for authorization that the Corporation be dissolved in accordance with the following plan:

1. Upon resolution of the Board of Directors adopting this plan of dissolution, the Board of Directors shall submit the plan of dissolution to a vote of the sole member of the Corporation for approval.
2. Approval of the dissolution of the Corporation is required to be obtained by the New York State Public Health and Health Planning Council, and a copy of such approval is attached.
3. The Corporation has assets. Such assets are not legally required to be used for any particular purpose. The Corporation's assets consist of cash in the approximate amount of \$677,000 as of February 29, 2012 and other assets consisting of current and long term loan payments due from Our Lady of Victory Renaissance Corporation (an affiliate of the Corporation) in the approximate aggregate amount of \$164,000 as of February 29, 2012.
4. The assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc. The assets shall be used for purposes related to the provision and enhancement of long term health care programs and services consistent with the mission of providing care to elderly and disabled persons.

The following documents of Catholic Health System, Inc. are each attached to this Plan: the governing instrument and any amendments thereto, the financial reports for the last three years, the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in "The Official Catholic Directory", and a sworn affidavit from a director and officer of Catholic Health System, Inc. stating the purposes of the organization and that it is currently exempt from federal income taxation.

5. The Corporation has no liabilities. Any liabilities related to the dissolution procedure, including accounting and legal fees estimated at \$8,500, shall be incurred and payable by Catholic Health System, Inc., the Corporation's sole member.



6. Within two hundred seventy days after the date that an Order Approving Plan of Dissolution and Distribution of Assets is signed by the Court, the Corporation shall carry out this Plan.

7. This Amended and Restated Plan of Dissolution and Distribution of Assets amends and restates in its entirety the Plan of Dissolution and Distribution of Assets approved by the Board of Directors of the Corporation at a meeting held on July 21, 2011.

**Certification**

I, \_\_\_\_\_, Secretary of the St. Joseph's Manor of Olean, N.Y. hereby certify under penalties of perjury that a meeting of the Board of Directors of the Corporation was duly held at \_\_\_\_\_ on March 15, 2012 at \_\_\_\_\_ and the within Plan of Dissolution was duly submitted and passed by the required vote of the Directors, and that the sole member of the Corporation approved the Plan of Dissolution and Distribution of Assets.

\_\_\_\_\_  
(Signature)  
(Name of Officer & Title)  
Dated the \_\_\_\_ day of  
\_\_\_\_\_, 2012

**VERIFIED PETITION FOR ORDER APPROVING AMENDED AND RESTATED  
PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

----- X  
 In the Matter of the Application of :  
 St. Joseph's Manor of Olean, N.Y. : VERIFIED PETITION  
 For Approval of Amended and Restated Plan of :  
 Dissolution and Distribution of Assets pursuant to : Index No.  
 Section 1002 of the Not-for-Profit :  
 Corporation Law. :  
 ----- X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

Petitioner, St. Joseph's Manor of Olean, N.Y. by \_\_\_\_\_ of St. Joseph's  
Manor of Olean, N.Y., for its Verified Petition herein respectfully alleges:

1. St. Joseph's Manor of Olean, N.Y. (the "Corporation"), whose principal address is  
c/o Catholic Health System, Inc., 2121 Main Street, Suite 300, Buffalo, New York 14214, was  
incorporated pursuant to New York's Membership Corporations Law on June 14, 1961. A copy  
of the Restated Certificate of Incorporation filed with the New York State Department of State  
on April 7, 2006, and any amendments are attached as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and directors are as  
follows:

| <u>Name</u>         | <u>Title(s)</u>        | <u>Address</u>  |
|---------------------|------------------------|---|
| Edward Flynn        | Director               | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director               | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director               | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |

|                              |                         |  |
|------------------------------|-------------------------|--|
| Mark Meyerhofer              | Director                | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210                            |
| James Millard                | Director                | Kenmore Mercy Hospital<br>2950 Elmwood Avenue<br>Kenmore, New York 14217   |
| Robert Nasso                 | Director and Vice Chair | Rotenberg & Company LLP<br>1870 Winton Road South<br>Rochester, New York 14618   |
| Sherry Pomeroy               | Director                | University at Buffalo, SUNY<br>School of Nursing<br>323 Wende Hall 304E<br>3435 Main Street<br>Buffalo, New York 14214 |
| Mark A. Sullivan             | Director and Secretary  | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214                                 |
| Nancy Truver                 | Director                | 3525 Carnoustie Drive<br>Martinez, Georgia 30907   |
| Sr. Mary Anne Weldon, R.S.M. | Director                | Sullivan House<br>688 Ridge Road<br>Lackawanna, New York 14218   |
| Monsignor Robert E. Zapfel   | Director and Chair      | St. Leo the Great<br>885 Sweet Home Road<br>Amherst, New York 14226  |

3. The purposes for which the Corporation was organized are as follows: “The corporation is organized and at all times shall be operated exclusively for charitable, religious, scientific or educational purposes. Consistent with the foregoing, the specific purposes of the corporation are as follows:

(a) Establish, organize, construct, acquire, equip, maintain, manage and operate a nursing, convalescent and rehabilitative facility for the care and treatment of the sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board or health-related service and providing nursing care and health-related service to persons who are not occupants of the health care facility, and generally to serve such other purposes and provide all services and programs incidental to the operation of such a facility as defined in Article 28 of the New York Public Health Law.

(b) Establish, maintain, manage and operate various programs, functions and activities relating to health care, community awareness and staff enhancement, all in furtherance of the promotion of the physical and spiritual welfare of those individuals who utilize the resources of the corporation and of the community for which it is a part.

(c) Acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary for the construction, financing, refinancing or operation of the health care facility; and to secure the same by mortgage, pledge, or other lien, in furtherance of any and all of the objects of its business in connection with the health care facility.

The corporation shall support and enhance the efficiency of the health-related ministries of the corporation's member and corporations controlled by or connected with the corporation's member, by owning, leasing, managing and maintaining real estate, equipment and other property, and providing services to them.

The accomplishment of the purposes of the corporation must be promoted and conducted in a manner consistent with the Ethical and Religious Directives for Catholic Health Care Services adopted by the National Conference of Catholic Bishops, as amended from time to time and as implemented by the Bishop of Buffalo.”

4. The Corporation is a Type B corporation.

5. The assets of the Corporation and their fair market values are as follows: Cash in the approximate amount of \$677,000 as of February 29, 2012 and current and long term loan payments due from Our Lady of Victory Renaissance Corporation in the aggregate amount of \$164,000 as of February 29, 2012.

6. The Corporation's liabilities are as follows: The Corporation has no liabilities. Any liabilities related to the dissolution procedure shall be incurred and payable by the Corporation's sole member.

7. The Corporation's assets are not legally required to be used for any particular purpose.

8. Dissolution of the Corporation is contemplated and assets are to be distributed in accordance with the Amended and Restated Plan of Dissolution and Distribution of Assets.

9. The assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc.

The following documents of Catholic Health System, Inc. are attached to the Amended and Restated Plan of Dissolution and Distribution of Assets, which is an exhibit to the Petition:

- the governing instrument, with all amendments;
- financial reports for the last three years;
- the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in “The Official Catholic Directory”, and

- an affidavit from a director and officer thereof stating the purposes of the organization and that it is currently exempt from taxation.

10. A meeting of the Board of Directors of the Corporation was held pursuant to duly given notice on March 15, 2012 at which a resolution was duly passed by required vote of the directors of the Corporation adopting an Amended and Restated Plan of Dissolution and Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Amended and Restated Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as an Exhibit B.

11. The Amended and Restated Plan of Dissolution and Distribution of Assets adopted by the Board of Directors was submitted to a vote of the sole member of the Corporation as required by N-PCL § 1002(a). The Amended and Restated Plan of Dissolution and Distribution of Assets was approved by the sole member by required vote at a meeting of the member held on March 29, 2012. A copy of the resolutions of the member approving the Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as an Exhibit C.

12. Approval of the New York State Public Health and Health Planning Council is required, and a copy of such approval is attached as Exhibit D.

13. No previous application for approval of the Amended and Restated Plan of Dissolution and Distribution of Assets of the Corporation has been made.

WHEREFORE, petitioner requests that the Court grant an Order Approving the Amended and Restated Plan of Dissolution and Distribution of Assets of St. Joseph's Manor of Olean, N.Y., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this \_\_\_\_ day of \_\_\_\_\_, 2012 by

\_\_\_\_\_  
(Signature)  
Name of Officer: \_\_\_\_\_  
Title: \_\_\_\_\_



## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of August, 2012, approves the filing of the Certificate of Dissolution of St. Joseph's Manor of Olean, N.Y., dated August 26, 2012.



**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 *JED*

**DATE:** July 9, 2012

**SUBJECT:** Proposed Dissolution of St. Luke Manor of Batavia, N.Y.

---

St. Luke Manor of Batavia, N.Y. ("St. Luke") requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

St. Luke was formed in 1961 under the Membership Corporations Law and operated a residential health care center in Genesee County until 2004, when St. Luke ceased operations and surrendered its operating certificate to the Department. Therefore, there is no longer a reason for St. Luke to exist. Pursuant to St. Luke's Plan of Dissolution, if approved by the Supreme Court, St. Luke's remaining assets will be transferred to its sole member, Catholic Health System, Inc.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from St. Luke's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of St. Luke's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments



REC'D

MAY 11 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL



**Phillips Lytle** LLP

RECEIVED

MAY 10 2012  
NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

**Via FedEx**

New York State Department of Health  
Division of Legal Affairs  
Bureau of House Counsel  
24th Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12237

RECEIVED

MAY 11 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Attn: Michael Stone, Associate Attorney

Re: Request for Approval of Voluntary Dissolution of St. Luke Manor of Batavia, N.Y.  
(the "Corporation")

Dear Mr. Stone:

We represent the above-referenced Corporation in connection with its proposed voluntary dissolution under the New York State Not-for-Profit Corporation Law. The Corporation requests the approval of the New York State Public Health and Health Planning Council (the "Council") to voluntarily dissolve. Please note that the enclosed documents have been updated to incorporate David Quist's comments contained in his letter to me dated March 5, 2012 regarding a related entity, and as we discussed, have been revised to change the entity to which assets are proposed to be distributed upon dissolution.

We offer the following information regarding the Corporation, its public need for dissolution and the proposed disposition of its assets: the Corporation was incorporated on June 14, 1961 but no longer undertakes any substantive activity, voluntarily returned its operating certificate (Certificate #1801302N) to operate as a nursing home to the NYS Department of Health on June 17, 2004 and has no outstanding claims against it nor any liabilities. As such, the Corporation's board of directors and its member (with ratification by its member's corporate members and religious sponsors) have determined that there is no reason to continue the Corporation's existence and that any remaining assets could be better utilized by and should be transferred to the Corporation's sole member, Catholic Health System, Inc. upon dissolution. As discussed, the Corporation had initially determined that its affiliate, St. Francis Home of Williamsville should be the recipient of any remaining assets, but because of further internal considerations since the date of its initial

ATTORNEYS AT LAW

SHARON PRISE AZURIN, PARTNER DIRECT 716 847 7088 SAZURIN@PHILLIPSLYTL.COM

3400 HSBC CENTER BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100  
BUFFALO ALBANY CHAUTAUQUA GARDEN CITY NEW YORK ROCHESTER WWW.PHILLIPSLYTL.COM



New York State Department of Health  
Page 2

May 10, 2012

application to the Council for approval to dissolve, the Corporation has determined that the assets are more appropriately transferred to Catholic Health System, Inc.

Enclosed are the following documents we understand are required by the Council to consider the requested approval of the Corporation's dissolution and distribution of assets:

1. The proposed executed Certificate of Dissolution;
2. The proposed Amended and Restated Plan of Dissolution and Distribution of Assets; and
3. The proposed Verified Petition for Order Approving Plan of Dissolution and Distribution of Assets.

Please do not hesitate to contact me should the Council's office require any additional information or documentation in connection with the Corporation's request for approval of voluntary dissolution.

We appreciate your assistance and the Council's consideration of this matter.

Very truly yours,

Phillips Lytle LLP

By 

Sharon Prise Azurin

SPAls

Enclosures

Doc # 01-2571036.2

cc: Nancy J. Sheehan RN, Esq. (w/o encls.)  
Robert M. Greene, Esq. (w/o encls.)

## CERTIFICATE OF DISSOLUTION

Certificate of Dissolution  
of St. Luke Manor of Batavia, N.Y.  
Under Section 1003 of the Not-for-Profit Corporation Law

I, Christine Kluckhohn, the President & CEO of St. Luke Manor of Batavia, N.Y. (the "Corporation") hereby certify:

1. The name of this Corporation is St. Luke Manor of Batavia, N.Y.
2. The Certificate of Incorporation of St. Luke Manor of Batavia, N.Y. was filed with the New York State Department of State on the 14th day of June, 1961.
3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:


| <u>Name</u>         | <u>Title(s)</u>         | <u>Address</u>  |
|---------------------|-------------------------|---|
| Edward Flynn        | Director                | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President  | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director                | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director                | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |
| Mark Meyerhofer     | Director                | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210 |
| James Millard       | Director                | Kenmore Mercy Hospital<br>2950 Elmwood Avenue<br>Kenmore, New York 14217                    |
| Robert Nasso        | Director and Vice Chair | Rotenberg & Company LLP<br>1870 Winton Road South<br>Rochester, New York 14618              |

|                              |                        |  |
|------------------------------|------------------------|--|
| Sherry Pomeroy               | Director               | University at Buffalo, SUNY<br>School of Nursing<br>323 Wende Hall 304E<br>3435 Main Street<br>Buffalo, New York 14214 |
| Mark A. Sullivan             | Director and Secretary | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214                                 |
| Nancy Truver                 | Director               | 3525 Carnoustie Drive<br>Martinez, Georgia 30907   |
| Sr. Mary Anne Weldon, R.S.M. | Director               | Sullivan House<br>688 Ridge Road<br>Lackawanna, New York 14218   |
| Monsignor Robert E. Zapfel   | Director and Chair     | St. Leo the Great<br>885 Sweet Home Road<br>Amherst, New York 14226  |

4. At the time of dissolution the Corporation is a Type B New York not-for-profit corporation.
5. At the time of the authorization of the Corporation's Amended and Restated Plan of Dissolution and Distribution of Assets pursuant to N-PCL §1002, the Corporation held no assets legally required to be used for a particular purpose.
6. The Corporation elects to dissolve.
7. An Amended and Restated Plan of Dissolution and Distribution of Assets was authorized by required vote of the Board of Directors of the Corporation on March 15, 2012 and approved by the sole member of the Corporation by required vote on March 29, 2012.
8. On \_\_\_\_\_, 20\_\_, the New York State Supreme Court, Erie County, issued an Order Approving the Plan of Dissolution and Distribution of Assets. Prior to the filing of this Certificate of Dissolution with the Department of State, a copy of the Order will be annexed hereto, pursuant to N-PCL §1003(a)(8).
9. Approval of the dissolution of the Corporation is required by the New York State Public Health and Health Planning Council and a copy of such approval will be attached prior to the filing of this Certificate of Dissolution with the Department of State.
10. The Corporation has carried out the Amended and Restated Plan of Dissolution and Distribution of Assets.

11. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of St. Luke Manor of Batavia, N.Y. this 26th day of April, 2012.

A handwritten signature in cursive script, appearing to read "Christine Kluekhohn", written over a horizontal line.

(Signature)

Name of Officer: Christine Kluekhohn

Title: President & CEO

**Certificate of Dissolution**

**of**

**St. Luke Manor of Batavia, N.Y.**

**Under Section 1003 of the Not-for-Profit Corporation Law**

Filed by:

Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203

**AMENDED AND RESTATED PLAN OF DISSOLUTION  
AND DISTRIBUTION OF ASSETS**

Amended and Restated Plan of Dissolution and Distribution of Assets of  
St. Luke Manor of Batavia, N.Y.,  
a New York Not-For-Profit Corporation

The Board of Directors of St. Luke Manor of Batavia, N.Y., a New York not-for-profit corporation (the "Corporation"), at a meeting duly convened on the 15th day of March, 2012, pursuant to notice given in accordance with applicable law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation to effect such a dissolution, and the Board of Directors having adopted, by the required vote, a plan for a voluntary dissolution of the Corporation, does hereby recommend to the sole member of the Corporation for authorization that the Corporation be dissolved in accordance with the following plan:

1. Upon resolution of the Board of Directors adopting this plan of dissolution (the "Plan"), the Board of Directors shall submit the Plan to a vote of the sole member of the Corporation for approval.
2. Approval of the dissolution of the Corporation is required to be obtained from the New York State Public Health and Health Planning Council, and a copy of such approval is attached.
3. The Corporation has assets. Such assets are not legally required to be used for any particular purpose. The Corporation's assets consist of cash in the approximate amount of \$7,000 as of February 29, 2012, and the Corporation has no other assets to distribute.
4. The assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc. The assets shall be used for purposes related to the provision and enhancement of long term health care programs and services consistent with the mission of providing care to elderly and disabled persons.

The following documents of Catholic Health System, Inc. are each attached to this Plan: the governing instrument and any amendments thereto, the financial reports for the last three years, the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in "The Official Catholic Directory", and a sworn affidavit from a director and officer of Catholic Health System, Inc. stating the purposes of the organization and that it is currently exempt from federal income taxation.

5. The Corporation has no liabilities. Any liabilities related to the dissolution procedure, including accounting and legal fees estimated at \$8,500, shall be incurred and payable by Catholic Health System, Inc. the Corporation's sole member.
6. Within two hundred seventy days after the date that an Order Approving Plan of Dissolution and Distribution of Assets is signed by the Court, the Corporation shall carry out this Plan.

7. This Amended and Restated Plan of Dissolution and Distribution of Assets amends and restates in its entirety the Plan of Dissolution and Distribution of Assets approved by the Board of Directors of the Corporation at a meeting held on July 21, 2011.

**Certification**

I, \_\_\_\_\_, Secretary of the St. Luke Manor of Batavia, N.Y. hereby certify under penalties for perjury that a meeting of the Board of Directors of the Corporation was duly held at \_\_\_\_\_ on March 15, 2012 at \_\_\_\_\_ and the within Plan of Dissolution was duly submitted and passed by the required vote of the Board of Directors and, that, the sole member of the Corporation approved the Plan of Dissolution.

\_\_\_\_\_  
(Signature)  
(Name of Officer & Title)  
Dated the \_\_\_\_ day of \_\_\_\_\_, 2012.



**VERIFIED PETITION FOR ORDER APPROVING AMENDED AND RESTATED  
PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

|  |   |                   |
|--|---|-------------------|
| -----  | X |                   |
| In the Matter of the Application of                | : |                   |
| St. Luke Manor of Batavia, N.Y.                    | : | VERIFIED PETITION |
| For Approval of Amended and Restated Plan of       | : |                   |
| Dissolution and Distribution of Assets pursuant to | : | Index No.         |
| Section 1002 of the Not-for-Profit                 | : |                   |
| Corporation Law.                                   | : |                   |
| -----  | X |                   |

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

Petitioner, St. Luke Manor of Batavia, N.Y. by \_\_\_\_\_ of St. Luke Manor of Batavia, N.Y., for its Verified Petition herein respectfully alleges:

1. St. Luke Manor of Batavia, N.Y. (the "Corporation"), whose principal address is c/o Catholic Health System, Inc., 2121 Main Street, Suite 300, Buffalo, New York 14214, was incorporated pursuant to New York's Membership Corporations Law on June 14, 1961. A copy of the Certificate of Incorporation and any amendments are attached as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and directors are as follows:

| <u>Name</u>         | <u>Title(s)</u>        | <u>Address</u>  |
|---------------------|------------------------|---|
| Edward Flynn        | Director               | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director               | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director               | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |
| Mark Meyerhofer     | Director               | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210 |

|                              |                         |  |
|------------------------------|-------------------------|--|
| James Millard                | Director                | Kenmore Mercy Hospital<br>2950 Elmwood Avenue<br>Kenmore, New York 14217   |
| Robert Nasso                 | Director and Vice Chair | Rotenberg & Company LLP<br>1870 Winton Road South<br>Rochester, New York 14618   |
| Sherry Pomeroy               | Director                | University at Buffalo, SUNY<br>School of Nursing<br>323 Wende Hall 304E<br>3435 Main Street<br>Buffalo, New York 14214 |
| Mark A. Sullivan             | Director and Secretary  | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214                                 |
| Nancy Truver                 | Director                | 3525 Carnoustie Drive<br>Martinez, Georgia 30907   |
| Sr. Mary Anne Weldon, R.S.M. | Director                | Sullivan House<br>688 Ridge Road<br>Lackawanna, New York 14218   |
| Monsignor Robert E. Zapfel   | Director and Chair      | St. Leo the Great<br>885 Sweet Home Road<br>Amherst, New York 14226  |

3. The purposes for which the Corporation was organized are as follows: "To establish and maintain a home to provide lodging, board and nursing care for sick, invalid, infirm, aged, disabled and convalescent persons under medical supervision."

4. The Corporation is a Type B corporation.

5. The assets of the Corporation and their fair market values are as follows: Cash in the approximate amount of \$7,000 as of February 29, 2012.

6. The Corporation's liabilities are as follows: The Corporation has no liabilities. Any liabilities related to the dissolution procedure shall be incurred and payable by the Corporation's sole member.

7. The Corporation's assets are not legally required to be used for any particular purpose.

8. Dissolution of the Corporation is contemplated and assets are to be distributed in accordance with the Amended and Restated Plan of Dissolution and Distribution of Assets.

9. The assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc.

The following documents of Catholic Health System, Inc. are attached to the Amended and Restated Plan of Dissolution and Distribution of Assets, which is an exhibit to the Petition:

- the governing instrument, with all amendments;
- financial reports for the last three years;
- the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in “The Official Catholic Directory”; and
- an affidavit from a director and officer thereof stating the purposes of the organization and that it is currently exempt from taxation.

10. A meeting of the Board of Directors of the Corporation was held pursuant to duly given notice on March 15, 2012 at which a resolution was duly passed by required vote of the directors of the Corporation adopting an Amended and Restated Plan of Dissolution and Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Amended and Restated Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as Exhibit B.

11. The Amended and Restated Plan of Dissolution and Distribution of Assets adopted by the Board of Directors was submitted to a vote of the sole member of the Corporation as required by N-PCL §1002(a). The Amended and Restated Plan of Dissolution and Distribution of Assets was approved by the sole member by required vote at a meeting of the member held on March 29, 2012. A copy of the resolutions of the member approving the Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as Exhibit C.

12. Approval of the New York State Public Health and Health Planning Council is required, and a copy of such approval is attached as Exhibit D.

13. No previous application for approval of the Amended and Restated Plan of Dissolution and Distribution of Assets of the Corporation has been made.

WHEREFORE, petitioner requests that the Court grant an Order Approving the Amended and Restated Plan of Dissolution and Distribution of Assets of St. Luke Manor of Batavia, N.Y., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this \_\_\_\_ day of \_\_\_\_\_, 2012 by

\_\_\_\_\_  
(Signature)  
Name of Officer: \_\_\_\_\_  
Title: \_\_\_\_\_

**Verification**

STATE OF NEW YORK    )  
  :SS.:  
COUNTY OF ERIE        )

\_\_\_\_\_, being duly sworn, deposes and says:

I am the \_\_\_\_\_ of St. Luke Manor of Batavia, N.Y., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

\_\_\_\_\_  
(Signature)

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public


## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of August, 2012, approves the filing of the Certificate of Dissolution of St. Luke Manor of Batavia, N.Y., dated April 26, 2012.



**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:** July 9, 2012  
**SUBJECT:** Proposed Dissolution of St. Mary's Manor

---

St. Mary's Manor requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

St. Mary's Manor was formed in 1966 under the Membership Corporations Law and operated a residential health care facility in Niagara County until 2003, when St. Mary's Manor ceased operations and surrendered its operating certificates to the Department. Therefore, there is no longer a reason for St. Mary's Manor to exist. Pursuant to St. Mary's Manor's Plan of Dissolution, if approved by the Supreme Court, St. Mary's Manor's liabilities, if any, will be paid by Catholic Health System, Inc., the sole member of the corporation.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from St. Mary's Manor's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court's approval of St. Mary's Manor's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments



**Phillips Lytle LLP**

**Via FedEx**

May 10, 2012

New York State Department of Health  
Division of Legal Affairs  
Bureau of House Counsel  
24th Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12237

RECEIVED

MAY 11 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Attn: David W. Quist, Associate Attorney

Re: Request for Approval of Voluntary Dissolution of St. Mary's Manor (the  
"Corporation")

Dear Mr. Quist:

We represent the above-referenced Corporation in connection with its proposed voluntary dissolution under the New York State Not-for-Profit Corporation Law. The Corporation requests the approval of the New York State Public Health and Health Planning Council (the "Council") to voluntarily dissolve. Please note that the enclosed documents have been updated to incorporate the comments contained in your letter dated March 5, 2012, and, per our telephone discussion, have been revised to change the entity to which assets are proposed to be distributed upon dissolution.

We offer the following information regarding the Corporation, its public need for dissolution and the proposed disposition of its assets: the Corporation was incorporated on January 27, 1966 but no longer undertakes any substantive activity, voluntarily returned its operating certificate (Certificate #3102306N to operate as a nursing home to the NYS Department of Health on June 28, 2003 and has no outstanding claims against it nor any liabilities. As such, the Corporation's board of directors and its member (with ratification by its member's corporate members and religious sponsors) have determined that there is no reason to continue the Corporation's existence and that any remaining assets could be better utilized by and should be transferred to the Corporation's sole member, Catholic Health System, Inc. upon dissolution. As discussed, the Corporation had initially determined that its affiliate, St. Francis Home of Williamsville should be the recipient of any remaining assets, but because of further internal considerations since the date of its initial

ATTORNEYS AT LAW

SHARON PRISE AZURIN, PARTNER DIRECT 716 847 7088 SAZURIN@PHILLIPSLYTTLE.COM

3400 HSBC CENTER BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100  
BUFFALO ALBANY CHAUTAUQUA GARDEN CITY NEW YORK ROCHESTER WWW.PHILLIPSLYTTLE.COM



New York State Department of Health  
Page 2

May 10, 2012

application to the Council for approval to dissolve, the Corporation has determined that the assets are more appropriately transferred to Catholic Health System, Inc.

Enclosed are the following documents we understand are required by the Council to consider the requested approval of the Corporation's dissolution and distribution of assets:

1. The proposed executed Certificate of Dissolution;
2. The proposed Amended and Restated Plan of Dissolution and Distribution of Assets; and
3. The proposed Verified Petition for Order Approving Plan of Dissolution and Distribution of Assets.

Please do not hesitate to contact me should the Council's office require any additional information or documentation in connection with the Corporation's request for approval of voluntary dissolution.

We appreciate your assistance and the Council's consideration of this matter.

Very truly yours,

Phillips Lytle LLP

By 

Sharon Prise Azurin

SPAls

Enclosures

Doc # 01-2570970.2

cc: Nancy J. Sheehan RN, Esq. (w/o encls.)  
Robert M. Greene, Esq. (w/o encls.)



## CERTIFICATE OF DISSOLUTION

Certificate of Dissolution  
of St. Mary's Manor  
Under Section 1003 of the Not-for-Profit Corporation Law

I, Christine Kluckhohn, the President & CEO of St. Mary's Manor (the "Corporation") hereby certify:

1. The name of this Corporation is St. Mary's Manor.
2. The Certificate of Incorporation of the Corporation was filed with the New York State Department of State on the 27th day of January, 1966.
3. The names and addresses of each of the officers and directors of the Corporation and the title of each are as follows:

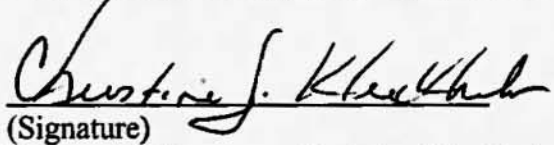
| <u>Name</u>         | <u>Title(s)</u>         | <u>Address</u>  |
|---------------------|-------------------------|---|
| Edward Flynn        | Director                | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President  | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director                | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director                | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |
| Mark Meyerhofer     | Director                | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210 |
| James Millard       | Director                | Kenmore Mercy Hospital<br>2950 Elmwood Avenue<br>Kenmore, New York 14217                    |
| Robert Nasso        | Director and Vice Chair | Rotenberg & Company LLP<br>1870 Winton Road South<br>Rochester, New York 14618              |

|                              |                        |  |
|------------------------------|------------------------|--|
| Sherry Pomeroy               | Director               | University at Buffalo, SUNY<br>School of Nursing<br>323 Wende Hall 304E<br>3435 Main Street<br>Buffalo, New York 14214 |
| Mark A. Sullivan             | Director and Secretary | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214                                 |
| Nancy Truver                 | Director               | 3525 Carnoustie Drive<br>Martinez, Georgia 30907   |
| Sr. Mary Anne Weldon, R.S.M. | Director               | Sullivan House<br>688 Ridge Road<br>Lackawanna, New York 14218   |
| Monsignor Robert E. Zapfel   | Director and Chair     | St. Leo the Great<br>885 Sweet Home Road<br>Amherst, New York 14226  |

4. At the time of dissolution the Corporation is a Type B New York not-for-profit corporation.
5. At the time of authorization of the Corporation's Amended and Restated Plan of Dissolution and Distribution of Assets pursuant to N-PCL §1002, the Corporation held no assets legally required to be used for a particular purpose.
6. The Corporation elects to dissolve.
7. An Amended and Restated Plan of Dissolution and Distribution of Assets was authorized by required vote of the Board of Directors of the Corporation on March 15, 2012 and approved by the sole member of the Corporation by required vote on March 29, 2012.
8. On \_\_\_\_\_, 20\_\_, the New York State Supreme Court, Erie County, issued an Order Approving the Plan of Dissolution and Distribution of Assets. Prior to the filing of this Certificate of Dissolution with the Department of State, a copy of the Order will be annexed hereto, pursuant to N-PCL §1003(a)(8).
9. Approval of the dissolution of the Corporation is required by the New York State Public Health and Health Planning Council and a copy of such approval will be attached prior to the filing of this Certificate of Dissolution with the Department of State.
10. The Corporation has carried out the Amended and Restated Plan of Dissolution and Distribution of Assets.

11. Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of St. Mary's Manor this 26th day of April, 2012.



(Signature)

Name of Officer: Christine Kluckhohn

Title: President & CEO

**Certificate of Dissolution**

**of**

**St. Mary's Manor**

**Under Section 1003 of the Not-for-Profit Corporation Law**

**Filed by:**

**Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203**

**AMENDED AND RESTATED PLAN OF DISSOLUTION  
AND DISTRIBUTION OF ASSETS**

**Amended and Restated Plan of Dissolution and Distribution of Assets  
of St. Mary's Manor, a New York  
Not-for-Profit Corporation**

The Board of Directors of St. Mary's Manor (the "Corporation"), at a meeting duly convened on the 15th day of March, 2012, pursuant to notice given in accordance with the applicable law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and in the best interests of the Corporation, and the Board of Directors having adopted, by the required vote, a plan for a voluntary dissolution of the Corporation, does hereby recommend to the sole member of the Corporation for authorization that the Corporation be dissolved in accordance with the following plan:

1. Upon resolution of the Board of Directors adopting this plan of dissolution, the Board of Directors shall submit the plan of dissolution to a vote of the sole member of the Corporation for approval.
2. Approval of the dissolution of the Corporation is required to be obtained by the New York State Public Health and Health Planning Council, and a copy of such approval is attached.
3. The Corporation has assets. Such assets are not legally required to be used for any particular purpose. The Corporation's assets consist of cash in the approximate amount of \$1,027,000 as of February 29, 2012 and other assets consisting of an account receivable payable from Catholic Health System, Inc. (the sole member of the Corporation) in the approximate amount of \$458,000 as of February 29, 2012.
4. The assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc. The assets shall be used for purposes related to the provision and enhancement of long term health care programs and services consistent with the mission of providing care to elderly and disabled persons.

The following documents of Catholic Health System, Inc. are each attached to this Plan: the governing instrument and any amendments thereto, the financial reports for the last three years, the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in "The Official Catholic Director", and a sworn affidavit from a director and officer of Catholic Health System, Inc. stating the purposes of the organization and that it is currently exempt from federal income taxation.

5. The Corporation has no liabilities. Any liabilities related to the dissolution procedure, including accounting and legal fees estimated at \$8,500, shall be incurred and payable by Catholic Health System, Inc. the Corporation's sole member.

6. Within two hundred seventy days after the date that an Order Approving Plan of Dissolution and Distribution of Assets is signed by the Court, the Corporation shall carry out this Plan.

7. This Amended and Restated Plan of Dissolution and Distribution of Assets amends and restates in its entirety the Plan of Dissolution and Distribution of Assets approved by the Board of Directors of the Corporation at a meeting held on July 21, 2011.

**Certification**

I, \_\_\_\_\_, Secretary of the St. Mary's Manor hereby certify under penalties of perjury that a meeting of the Board of Directors of the Corporation was duly held at \_\_\_\_\_ on March 15, 2012 at \_\_\_\_\_ and the within Plan of Dissolution was duly submitted and passed by the required vote of the Directors, and that the sole member of the Corporation approved the Plan of Dissolution and Distribution of Assets.

\_\_\_\_\_  
(Signature)  
(Name of Officer & Title)  
Dated the \_\_\_ day of \_\_\_\_\_, 2012

**VERIFIED PETITION FOR ORDER APPROVING AMENDED AND RESTATED  
PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

----- X  
In the Matter of the Application of :  
St. Mary's Manor : VERIFIED PETITION  
For Approval of Amended and Restated Plan of :  
Dissolution and Distribution of Assets pursuant to : Index No.  
Section 1002 of the Not-for-Profit :  
Corporation Law. :  
----- X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

Petitioner, St. Mary's Manor by \_\_\_\_\_ of St. Mary's Manor, for its  
Verified Petition herein respectfully alleges:

1. St. Mary's Manor (the "Corporation"), whose principal address is c/o Catholic Health System, Inc., 2121 Main Street, Suite 300, Buffalo, New York 14214, was incorporated pursuant to New York's Membership Corporations Law on January 27, 1966. A copy of the Certificate of Incorporation and any amendments are attached as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and directors are as follows:

| <u>Name</u>         | <u>Title(s)</u>        | <u>Address</u>  |
|---------------------|------------------------|---|
| Edward Flynn        | Director               | MassMutual Financial Group<br>300 Corporate Parkway, Suite 216 N<br>Amherst, New York 14226 |
| Christine Kluckhohn | Director and President | CHS Continuing Care<br>291 North Street<br>Buffalo, New York 14201                          |
| Joyce Markiewicz    | Director               | CHS Home Health Care<br>2875 Union Road, Suite 14<br>Cheektowaga, New York 14227            |
| Joseph D. McDonald  | Director               | Catholic Health System, Inc.<br>2121 Main Street, Suite 300<br>Buffalo, New York 14214      |
| Mark Meyerhofer     | Director               | Patricia Lynch Associates Inc.<br>726 Exchange Street, Suite 815<br>Buffalo, New York 14210 |

|                                     |                                |   |
|-------------------------------------|--------------------------------|---|
| <b>James Millard</b>                | <b>Director</b>                | <b>Kenmore Mercy Hospital<br/>2950 Elmwood Avenue<br/>Kenmore, New York 14217</b>   |
| <b>Robert Nasso</b>                 | <b>Director and Vice Chair</b> | <b>Rotenberg &amp; Company LLP<br/>1870 Winton Road South<br/>Rochester, New York 14618</b>                                       |
| <b>Sherry Pomeroy</b>               | <b>Director</b>                | <b>University at Buffalo, SUNY<br/>School of Nursing<br/>323 Wende Hall 304E<br/>3435 Main Street<br/>Buffalo, New York 14214</b> |
| <b>Mark A. Sullivan</b>             | <b>Director and Secretary</b>  | <b>Catholic Health System, Inc.<br/>2121 Main Street, Suite 300<br/>Buffalo, New York 14214</b>                                   |
| <b>Nancy Truver</b>                 | <b>Director</b>                | <b>3525 Carnoustie Drive<br/>Martinez, Georgia 30907</b>  |
| <b>Sr. Mary Anne Weldon, R.S.M.</b> | <b>Director</b>                | <b>Sullivan House<br/>688 Ridge Road<br/>Lackawanna, New York 14218</b>   |
| <b>Monsignor Robert E. Zapfel</b>   | <b>Director and Chair</b>      | <b>St. Leo the Great<br/>885 Sweet Home Road<br/>Amherst, New York 14226</b>  |

3. The purposes for which the Corporation was organized are as follows: "To establish and maintain a home to provide lodging, board and nursing care for sick, invalid, infirm, aged, disabled and convalescent persons under medical supervision."

4. The Corporation is a Type B corporation.

5. The assets of the Corporation and their fair market values are as follows: Cash in the approximate amount of \$1,027,000 as of February 29, 2012 and other assets consisting of an accounts receivable payable from Catholic Health System, Inc. (the sole member of the Corporation) in the approximately amount of \$458,000 as of February 29, 2012.

6. The Corporation's liabilities are as follows: The Corporation has no liabilities. Any liabilities related to the dissolution procedure shall be incurred and payable by the Corporation's sole member.

7. The Corporation's assets are not legally required to be used for any particular purpose.



8. Dissolution of the Corporation is contemplated and assets are to be distributed in accordance with the Amended and Restated Plan of Dissolution and Distribution of Assets.

9. The assets owned by the Corporation subject to any unpaid liabilities of the Corporation shall be distributed to the following organization with substantially similar purposes, which qualifies as an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended: Catholic Health System, Inc.

The following documents of Catholic Health System, Inc. are attached to the Amended and Restated Plan of Dissolution and Distribution of Assets, which is an exhibit to the Petition:

- the governing instrument, with all amendments;
- financial reports for the last three years;
- the Internal Revenue Service group ruling that the organization is exempt from taxation as listed in "The Official Catholic Directory"; and
- an affidavit from a director and officer thereof stating the purposes of the organization and that it is currently exempt from taxation.

10. A meeting of the Board of Directors of the Corporation was held pursuant to duly given notice on March 15, 2012 at which a resolution was duly passed by required vote of the directors of the Corporation adopting an Amended and Restated Plan of Dissolution and Distribution of Assets and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Amended and Restated Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as Exhibit B.

11. The Amended and Restated Plan of Dissolution and Distribution of Assets adopted by the Board of Directors was submitted to a vote of the sole member of the Corporation as required by N-PCL §1002(a). The Amended and Restated Plan of Dissolution and Distribution of Assets was approved by the sole member by required vote at a meeting of the member held on March 29, 2012. A copy of the resolutions of the member approving the Plan of Dissolution and Distribution of Assets, certified by the Secretary is attached as Exhibit C.

12. Approval of the New York State Public Health and Health Planning Council is required, and a copy of such approval is attached as Exhibit D.

13. No previous application for approval of the Amended and Restated Plan of Dissolution and Distribution of Assets of the Corporation has been made.

WHEREFORE, petitioner requests that the Court grant an Order Approving the Amended and Restated Plan of Dissolution and Distribution of Assets of St. Mary's Manor, a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this \_\_\_\_ day of \_\_\_\_\_, 2012 by

\_\_\_\_\_  
(Signature)  
Name of Officer: \_\_\_\_\_  
Title: \_\_\_\_\_

**Verification**

STATE OF NEW YORK     )  
                                      :SS.:  
COUNTY OF ERIE         )

\_\_\_\_\_, being duly sworn, deposes and says:

I am the \_\_\_\_\_ of St. Mary's Manor, the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

\_\_\_\_\_  
(Signature)

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public

Doc # 01-2471790.3

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 9th day of August, 2012, approves the filing of the Certificate of Dissolution of St. Mary's Manor, dated April 26, 2012.

---

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

**August 9, 2012**

---

**Book A**

**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 #14**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|--|---|
| 1. | 121180 E             | Gotham Health FQHC<br>(New York County)<br>Mr. Fassler – Interest<br>Dr. Martin – Interest<br>Dr. Sullivan - Recusal | Contingent Approval                       |

**Residential Health Care Facility – Establish**

**Exhibit #15**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|--|---|
| 1. | 082143 E             | OMOP, LLC d/b/a Orchard<br>Manor, Inc.<br>(Orleans County)<br>Mr. Booth - Interest | Contingent Approval                       |

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

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|--|---|
| 1. | 121135 E             | Genesee Region Home Care Association, Inc. d/b/a Lifetime Care<br>(Monroe County)<br>Mr. Fassler - Interest<br>Mr. Booth – Recusal<br>Ms. Hines- Recusal<br>Mr. Robinson – Recusal | Approval                                  |
| 2. | 121182 C             | McAuley-Seton Home Care Corporation<br>(Niagara County)<br>Mr. Booth - Interest  | Contingent Approval                       |

**HOME HEALTH AGENCY LICENSURES****Exhibit #17**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 2141 L               | Clinton County Department of Health<br>(Clinton County)<br>Mr. Booth - Interest | Contingent Approval                       |



# Public Health and Health Planning Council

Project # 121180-E

**Gotham Health FQHC**

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

**Program:** Diagnostic and Treatment Center  
**Submitted:** April 2, 2012

## Executive Summary

### Description

Gotham Health FQHC, Inc. (Gotham), a to-be-formed not-for-profit corporation, is seeking approval to become the co-operator and co-applicant with New York City Health and Hospitals Corporation (HHC) of six community-based primary care diagnostic and treatment centers (D&TCs) for the medically underserved, in order to achieve Federally Qualified Health Center (FQHC) "look-alike" status under Health Resources and Services Administration (HRSA) law. HHC will seek Section 330 status at a later date. Gotham will serve as the health center's community-based governing board of the six project sites.

HHC is committed to the medically underserved population in the New York City area. FQHC status will allow the six D&TC sites to better align with HHC's strategic goals to develop care coordination, and provide patient-centered medical homes through its primary care services, in alignment with state and national efforts in health reform.

The six sites are located in three Counties as follows:

| <u>Site</u>                    | <u>County</u> | <u>Address</u>                          |
|--------------------------------|---------------|---|
| Segundo Ruiz Belvis D&TC       | Bronx         | 545 East 142 <sup>nd</sup> St. Bronx    |
| Morrisania D&TC                | Bronx         | 1225-1257 Gerard Ave. Bronx             |
| Renaissance Healthcare Network | New York      | 215 West 125 <sup>th</sup> St. New York |
| Cumberland D&TC                | Kings         | 100 N. Portland Ave. Brooklyn           |
| East NY D&TC                   | Kings         | 2094 Pitkin Ave. Brooklyn               |
| Gouverneur D&TC                | New York      | 227 Madison St. New York                |

DOH Recommendation  
 Contingent approval.

### Need Summary

HHC will employ the public entity model developed by HRSA by entering into a co-applicant agreement with the Gotham Health FQHC, Inc., meeting all Section 330 requirements. The co-applicant agreement will delineate the roles, responsibilities, and authorities of both the public entity, HHC, and the independent co-applicant, Gotham Health FQHC, Inc. The six HHC facilities will receive the FQHC "look-alike" designation and Gotham Health FQHC, Inc., as the co-applicant, will serve as the health center's community-based governing board.

The six sites have served 160,420 patients with a total of 812,091 visits.

### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary

There are no project costs associated with this application.

|         |                     |                        |
|---------|---------------------|------------------------|
| Budget: | <i>Revenues:</i>    | <i>\$188,459,148</i>   |
|         | <i>Expenses:</i>    | <i>216,714,664</i>     |
|         | <i>Gain/(Loss):</i> | <i>( \$28,255,516)</i> |

HHC is committed to the medically underserved that these six D&TC facilities will serve, and is prepared to underwrite the projected loses.

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

## 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 co-applicant agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a signed and dated Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed co-applicant agreement between Gotham Health FQHC, Inc. and the New York City Health and Hospitals Corporation, acceptable to the Department. [CSL]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

Gotham Health FQHC, Inc. (Gotham) seeks to become the established co-operator with New York City Health and Hospitals Corporation of six diagnostic and treatment centers (D&TCs) currently operated solely by the New York City Health and Hospital Corporation (HHC).

The conversion of the six D&TCs to FQHC “look-alike” status will allow HHC to more efficiently and effectively meet the needs of the medically underserved by better positioning the D&TCs to provide medical homes for their patients. HHC has obtained NCQA Level 3 Patient Center Medical Home designation for its primary care clinics, including the D&TCs. As FQHC “look-alikes”, the D&TCs will be able to provide patient-centered, comprehensive, and coordinated care in a cost effective manner based on the medical home model.

The following zip codes define the service area for the six HHC clinics by site:

Gouverneur - 10002, 11220, 10009, 11373, 11355, 10038, 11368, 11219, 12208, 11211

Renaissance - 10027, 10039, 10030, 10026, 10031, 10034, 10032, 10037,  
10040, 10035, 10033, 10029, 10452, 10468, 10453, 10456, 10457

Cumberland - 11225, 11226, 11211, 11206, 11201, 11205, 11208, 11207, 11238,  
11236, 11221, 11216, 11233, 11212, 11203, 11213, 11237

East New York - 11207, 11208, 11212, 11233, 11236, 11213

Segundo - 10454, 10455, 10451, 10472, 10456, 10459, 10460

Morrisania - 10452, 10456, 10453, 10457, 10451, 10468, 10458

For fiscal year 2010, July 1, 2010 to June 30, 2011, HHC provided services for the following number of patients with the respective number of visits, which are combined primary care and specialty care visits, at each of the six service delivery sites:

| <u>Site</u>   | <u>Patients</u> | <u>Visits</u>  |
|---------------|-----------------|----------------|
| Gouverneur    | 48,326          | 343,941        |
| Renaissance   | 23,781          | 88,323         |
| Cumberland    | 26,634          | 120,995        |
| East New York | 23,767          | 97,910         |
| Segundo       | 14,112          | 69,526         |
| Morrisania    | 23,800          | 91,396         |
| <b>TOTAL</b>  | <b>160,420</b>  | <b>812,091</b> |

The target population currently receives services at the six HHC D&TCs. HHC’s six health centers have responded to identified health care needs in the following ways:

- extended evening and weekend hours to increase access to services beyond traditional business hours;
- availability of sliding fee scale discounts for low income uninsured patients;
- transportation assistance for patients;
- programs and services specifically developed to address identified health care needs;
- collaboration and coordination of services with other community health care providers to ensure continuity of care and reduce duplication of services; and



- providing services to enable access including eligibility assistance, interpretation and translation, and case management.

HHC's six D&TCs have achieved NCQA Patient Centered Medical Home (PCMH) Level 3 certification as of March 2011, demonstrating a multi-disciplinary team approach to providing comprehensive primary care. Each D&TC is also a certified NCQA Diabetes Preferred Health Center.

#### Conclusion

The conversion of the HHC clinics to FQHC Look Alike status aligns with HHC's overall strategic goals to develop care coordination and provide patient-centered medical homes through its primary care services. This will be especially beneficial to the clientele projected to use the six D&T center sites, over 75 percent of whose visits will be covered by Medicaid or charity care.

#### Recommendation

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

## Programmatic Analysis

#### Program Proposal

Establish Gotham Health FQHC, Inc. as the co-operator of six diagnostic and treatment centers and their extension clinics currently owned and operated by the New York City Health and Hospitals Corporation. The co-operator is being established in order for the clinics to qualify as Federally Qualified Health Center Look-Alikes.

#### Character and Competence

Gotham Health FQHC, Inc. is a to-be-formed not-for-profit corporation. The initial board of directors is:

Elissa Macklin  
Maria Vega  
Dolores R. McCray  
Antoinette Brown  
Vivian Y. Bright

The board members have varied backgrounds, which are those of a business manager, a retired director of operations of Ambulatory Care at Woodhull Medical Center, a job placement consultant, a business development manager and the Deputy Director of Administrative Payroll for the NYC Department of Education.

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.

#### Recommendation

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

## Financial Analysis

#### Background

Segundo Ruiz Belvis D&TC has one extension clinic located at 348 East 156<sup>th</sup> St., Bronx.

Morrisania D&TC has two extension clinics located at 401 East 168<sup>th</sup> St. and 1309 Fulton Ave., along with six school-based clinics all within the Bronx.

Renaissance Health Care Network has six extension clinics located at 2698 8<sup>th</sup> Ave., 175 Nagle Ave., 3170 Broadway, 34 West 118<sup>th</sup> Street, 281 West 127<sup>th</sup> Street, 600 West 168<sup>th</sup> Street, and nine school-based clinics, all within New York City.

Cumberland D&TC has seven extension clinics located at 485 Throop Avenue, 388 Pulaski Street, 295 Flatbush Ave. Extension, 833 Roebling Street, 434 Dekalb Avenue, 47 Marcus Garvey Blvd., and 151 Maujer Street, all within Brooklyn.

East NY D&TC has three extension clinics located at 259 Bristol Street, 51 Stuyvesant Place, and 1091 Sutter Avenue, along with two school-based clinics, all within Brooklyn.

Gouverneur D&TC has seven extension clinics located at 280 Delancey Street, 227 Madison Street, 227 Madison Avenue, 34 Spring Street, 540 East 13<sup>th</sup> Street, 60 Madison Street, and 215 Avenue B, all located in New York City.

Operating Budget

The applicant has submitted an operating budget for all six D&TC sites, in 2012 dollars, which is summarized below:

|   | <u>Current Year</u> | <u>Years One and Three</u> |
|---|---------------------|----------------------------|
| Revenue                                     | \$151,094,880       | \$188,459,148              |
| Expenses:                                   |                     |                            |
| Operating                                   | \$202,690,735       | \$209,068,903              |
| Capital                                     | <u>8,338,285</u>    | <u>7,645,761</u>           |
| Total Expenses                              | \$211,029,020       | \$216,714,664              |
| <br>Excess (Loss) of Revenues over Expenses | <br>\$(59,934,140)  | <br>\$(28,255,516)         |
| <br>Utilization: (Visits)                   | <br>780,960         | <br>786,666                |
| <br>Cost Per Visit                          | <br>\$270.22        | <br>\$275.14               |

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

|                            | <u>Years One and Three</u> |
|----------------------------|----------------------------|
| Medicaid Fee-for-Service   | 11.1%                      |
| Medicaid Managed Care      | 43.1%                      |
| Medicare Fee-for-Service   | 6.3%                       |
| Medicare Managed Care      | 6.8%                       |
| Commercial Managed Care    | 2.9%                       |
| Commercial Fee-For-Service | 3.6%                       |
| Private Pay/Other          | 0.5%                       |
| Charity Care               | 25.7%                      |

Expense and utilization assumptions are based on the historical experience of all six sites operated by HHC.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements have been estimated at \$36,074,111 based on third year budgeted expenses and will be funded through current operations, which appears reasonable based on BFA Attachment B, Financial Summary of New York Health and Hospital Corporation.

The submitted budget projects a loss of revenues over expenses of \$28,255,516 during the first year and third years. HHC will reduce the current loss from operations of its six D&TC sites by \$31,678,624 by achieving FQHC status. Medicaid revenues reflect prevailing reimbursement methodologies. Gotham Health has elected to forgo APG reimbursement under FQHC status. Revenues were calculated based on the enhanced Medicaid rate and the Medicare rate, which will be received under the FQHC status. All other revenues reflect current reimbursement rates. HHC is committed to the medically underserved population in the New York City area, and seeking FQHC status will allow the six D&TC sites to better align with HHC's strategic goals.

Presented as BFA Attachment A is the audited financial summary of New York City Health and Hospitals Corporation, in which HHC Health and Home Care is a Division within the system. The June 30, 2011 financials show the applicant has maintained positive working capital, experienced deficit net assets, and a net loss of \$442,534,000 from operations for 2011. HHC relies on supplemental Medicaid Disproportionate Share Hospital and Upper Payment Limit funds to support its operations, which are estimated at \$1,722,000,000 for fiscal year 2012. As shown on BFA Attachment A, HHC has experienced net deficit positions and maintained positive working capital during the period shown. HHC has also experienced negative income from operations and has implemented the following management initiatives as of May 2010 into 2014, to increase income from operations:

- Phase I-\$300 million in benefits resulting from a hiring freeze, a reduction in supply costs, improved utilization management, and enhanced collection through improved documentation and coding.
- Phase II-\$300 million in savings through a restructuring program and the implementation of future initiatives to be in place by 2014. These initiatives include this application.

Subject to 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 Charts  |
| BFA Attachment B | Financial Summary of New York Health & Hospitals Corporation-2011                    |
| BFA Attachment C | Financial Summary of New York Health & Hospitals Corporation-draft December 31, 2011 |
| BFA Attachment D | Pro- forma Balance Sheet, Gotham Health FQHC, Inc.                                   |
| BHFP Attachment  | Map  |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of August, 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 become the co-operator and co-applicant with New York City and Hospitals Corporation of six community-based primary care diagnostic and treatment centers for the medically underserved in order to achieve FQHC "look-alike" status under HRSA law, 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:

121180 E

Gotham Health FQHC

APPROVAL CONTINGENT UPON:

1. Submission of an executed co-applicant agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of a signed and dated Certificate of Amendment of the Certificate of Incorporation of Gotham Health FQHC, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed co-applicant agreement between Gotham Health FQHC, Inc. and the New York City Health and Hospitals Corporation, 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  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237



# 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:

| <u>Before</u>            |      | <u>After</u>       |      |
|--------------------------|------|--------------------|------|
| Orchard Manor, Inc.      | 100% | OMOP, LLC          | 100% |
| <u>Sole Member</u>       |      | <u>Sole Member</u> |      |
| 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.

| <u>RHCF Bed Need – Orleans County</u> |     |
|---------------------------------------|-----|
| 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: | <i>Revenues:</i>    | \$ 9,682,705     |
|         | <i>Expenses:</i>    | <u>9,411,350</u> |
|         | <i>Gain/(Loss):</i> | \$ 271,355       |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. 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]

3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease that is acceptable to the Department of Health. [BFA, CSL]
5. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of OMOP, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed amendment to the Operating Agreement of OMOP, LLC, acceptable to the Department. [CSL]

Council Action Date

**August 9, 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:

| <u>Facility/County/Region</u> | <u>2007</u> | <u>2008</u> | <u>2009</u> |
|-------------------------------|-------------|-------------|-------------|
| 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

|                              | <i>Existing</i>  | <i>Proposed</i>   |
|------------------------------|--|---|
| <i>Facility Name</i>         | Orchard Manor Nursing Home   | Orchard Manor Rehabilitation and Nursing Center             |
| <i>Address</i>               | 600 Bates Road<br>Medina, NY 14103   | Same  |
| <i>RHCF Capacity</i>         | 160  | Same  |
| <i>ADHC Program Capacity</i> | NA   | Same  |
| <i>Type of Operator</i>      | Corporation  | Limited Liability Company                                   |
| <i>Class of Operator</i>     | Voluntary  | Proprietary   |
| <i>Operator</i>              | Orchard Manor Inc.<br><br><u>Sole Member</u><br>Medina Memorial Health Care System, Inc. | OMOP LLC<br><br><u>Sole Member</u><br>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:

|                   |                     |
|-------------------|---------------------|
| <i>Seller:</i>    | Orchard Manor, Inc. |
| <i>Purchaser:</i> | OMOP, LLC           |
| <i>Dated:</i>     | 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:

|                            | <u>Per Diem</u> | <u>Total</u>     |
|----------------------------|-----------------|------------------|
| Revenues:                  |                 |                  |
| Medicaid                   | \$128.33        | \$5,088,285      |
| Medicare                   | 425.00          | 1,844,500        |
| Private Pay/Other          | 266.47          | <u>2,749,920</u> |
| Total                      |                 | \$9,682,705      |
| Expenses:                  |                 |                  |
| Operating                  |                 | \$8,665,353      |
| Capital                    |                 | \$745,997        |
| Total                      |                 | \$9,411,350      |
| Net Income                 |                 | <u>\$271,355</u> |
| Utilization( Patient days) |                 | 54,310           |
| Occupancy                  |                 | 92.74%           |

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 92.74%, 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

from 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    | 8.00%  |
| Medicaid    | 73.00% |
| Private Pay | 19.00% |

- Breakeven occupancy is projected at 90.12%

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 \$1,568,558, which is approximately two months' of first year expenses. The proposed member will provide a total of \$818,558 towards the working capital necessary for the project, cash equity of \$68,558 will be provide from Mr. Scheiner's personal assets with the remaining portion of the member's contribution to working capital coming from a personal loan to Mr. Scheiner from TL Management at an interest rate of Libor plus 350 basis points or approximately 4.549% interest as of May 3<sup>rd</sup>, 2012 with a 5 year term. A Letter of Interest from TL Management has been provided for the personal loan to cover the member's portion of the working capital requirement. A Letter of Interest has been provided for the working capital loan, indicating a rate of Libor plus 425 basis points or approximately 5,299% interest as of May 3<sup>rd</sup> 2012 with a 3 year term. HHC Finance 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 \$850,000. The submitted budget indicates that a net income of \$271,355 would be maintained during the first year following change in ownership. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

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 \$20,350 during the period 2008-2011. In 2009, the facility experienced a \$262,362 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 and 2011, the facility has brought the loss to only \$17,627 and 57,080 for both years respectively, showing a positive trend in getting the facility to either a breakeven or profitable position.

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 \$861,443 during the period 2008-2011.

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 from 2009 through 2011.

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 \$1,219,750 during the period 2008-2011. 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. In 2011 the facility also achieved a positive net income of 2.8 million dollars in operations.

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 income of \$68,908 during the period 2008-2011. The 2008 and 2009 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. In 2011 the facility also posted a positive net income of \$499,869

As shown on BFA Attachment G, the Financial Summary for MSAF Group LLC d/b/a Sunshine Children's Home and Rehab Center, had average negative working capital and net asset positions, and generated an average net loss of \$466,684 during the period 2009-2011. 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 September 1, 2009. 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 2011, it appears that the facility received the rebased rates and the retroactive reimbursement check, as the net income for 2011 was \$2,274,620.

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 2008-2011                                |
| 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 2008-2011     |
| BFA Attachment E | Financial Summary, Gowanda Rehabilitation and Nursing Center for 2008-2011          |
| BFA Attachment F | Financial Summary, West Ledge Rehabilitation and Nursing Center for 2008-2011       |
| BFA Attachment G | Financial Summary, Sunshine Children's Home and Rehabilitation Center for 2009-2011 |

BFA Attachment H Comparison of Reimbursement vs. Lease Rental and Debt Service

BFA Attachment I Establishment Checklist

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 9th day of August, 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 OMOP, LLC as the new operator of Orchard Manor, Inc., and transfer the entire membership interest of Nathan Stern to Moshe Scheiner resulting in 100% membership interest for Mr. Scheiner, 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:

082143 E

OMOP, LLC d/b/a Orchard Manor, Inc.

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to enhance access to Medicaid residents. 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]

3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease that is acceptable to the Department of Health. [BFA, CSL]
5. Submission of a photocopy of the executed Certificate of Amendment of the Articles of Organization of OMOP, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed amendment to the Operating Agreement of OMOP, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237





# Public Health and Health Planning Council

Project # 121135-E  
**Genesee Region Home Care Association, Inc.  
d/b/a Lifetime Care**

**County: Monroe (Rochester)**  
**Purpose: Establishment**

**Program: Certified Home Health Agency**  
**Submitted: March 16, 2012**

## Executive Summary

### Description

Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, an existing Article 36 not-for-profit corporation, located at 3111 South Winton Road, Rochester, seeks approval to purchase and become operator of the Yates County Certified Home Health Agency (CHHA) located at 417 Liberty Street, Yates.

Lifetime Care currently operates an Article 36 CHHA servicing Cayuga, Livingston, Monroe, Seneca, Ontario, Wayne and Yates Counties.

The Yates County CHHA currently operates under a management and administrative service agreement with Lifetime Care approved by the Department on September 29, 2011. Lifetime Care plans to maintain all existing CHHA services.

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 all personal qualifying information indicates there is nothing in the background of the board members of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, North Star Home Health Management, Inc., Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

### Financial Summary

The total purchase price of \$800,000 will be paid via equity from the applicant. There are no project costs associated with this application.

|         |                     |                  |
|---------|---------------------|------------------|
| Budget: | <i>Revenues:</i>    | \$ 1,417,627     |
|         | <i>Expenses:</i>    | <u>1,293,936</u> |
|         | <i>Gain/(Loss):</i> | \$ 123,936       |

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

## Recommendations

Health Systems Agency  
Finger Lakes HSA recommends approval for this application.

Office of Health Systems Management  
**Approval.**

Council Action Date  
**August 9, 2012.**

## Programmatic Analysis

### Background

Genesee Region Home Care Association, Inc. d/b/a Lifetime Care is a not-for-profit corporation that operates an Article 36 certified home health agency (CHHA) located in Rochester and which is approved to serve patients in Cayuga, Livingston, Monroe, Ontario, Seneca and Wayne Counties. In addition, Lifetime Care also operates a long term home health care program (LTHHCP) approved to serve patients in Cayuga, Ontario, Seneca, Wayne and Yates Counties, and a freestanding hospice facility. The Public Health and Health Planning Council approved CON number 111413 for the acquisition of the CHHA operated by Schuyler County at the April 2012 meeting. Lifetime Care seeks approval to purchase and become the new operator of the CHHA currently operated by Yates County, which is approved to serve patients in Yates County.

Genesee Region Home Care Association, Inc. d/b/a Lifetime Care proposes to serve its CHHA patients residing in Yates County from a branch office to be located in Schuyler County. The Lifetime Care CHHA/LTHHCP main office will remain in Monroe County at 3111 South Winton Road, Rochester, New York 14623.

Lifetime Care will continue to provide the following home care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy and speech language pathology.

The sole corporate member of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, a not-for-profit corporation, is North Star Home Health Management, Inc., a not-for-profit corporation. The sole corporate member of North Star Home Health Management, Inc. is Excellus Health Plan, Inc. The sole corporate member of Excellus Health Plan, Inc. is Lifetime Healthcare, Inc., a not-for-profit holding company.

The Board of Directors of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care consists of the following individuals:

**Charles H. Stuart**, Acting Chairman  
Financial Advisor, Morgan Stanley  
Smith Barney  
Affiliations: Genesee Region  
Health Care of Ontario County, Inc.

**John B. Bielmiller**, Director  
Senior VP, Whitney & Co.  
(investment management)  
Affiliations: GRIPA (HMO),  
Genesee Region Health  
Care of Ontario County, Inc.

**William A. Johnson, Jr.**, Director  
Professor, Rochester Institute of  
Technology  
Affiliations: Genesee Region  
Health Care of Ontario County, Inc.

**Mordecai J. Kolko**, Director  
Retired

**Jordan I. Brown**, Treasurer  
Executive VP, Lifetime Assistance, Inc.  
(human services)  
Affiliations: Genesee Region Health Care  
of Ontario County, Inc.

**Marilyn Dollinger, R.N.**, Director  
Associate Dean, St. John Fisher College  
Affiliations: St. John's Senior Services,  
St John's Health Care Corporation,  
Genesee Region Health Care of  
Ontario County, Inc.

**David H. Klein**, Director  
President/CEO/COO, Excellus Health  
Plan, Inc.  
Affiliations: Excellus Health Plan, Inc.  
Genesee Region Health Care of Ontario  
County, Inc., Sibley Nursing Personnel  
Services, Inc., Genesee Valley Group  
Health Association (D&T)

**John J. Mahoney**, Director  
Founder/Principal, Summit Business Group, LLC  
Affiliations: Genesee Region Health Care  
of Ontario County, Inc.

**Jagat S. Mehta, M.D.**, Director  
Physician, Self-employed  
Affiliations: Genesee Region  
Health Care of Ontario County, Inc.

**Hilda Rosario-Escher**, Director  
Vice President, Ibero American  
Action League  
Affiliations: Huther-Doyle  
(substance abuse), Genesee  
Region Health Care of  
Ontario County, Inc., Rochester  
Psychiatric Center, Office of Mental  
Health

**Seymour M. Zivan**, Director  
Retired

**David D. Reh**, Director  
President, The Raytec Group, Inc.  
(administrative services)  
Affiliations: Excellus Health Plan, Inc.  
Genesee Region Health Care of  
Ontario County, Inc.

**Manuel M. Matos, M.D.**, Director  
Division Chief, Unity Health System  
Affiliations: Genesee Region Health Care  
of Ontario County, Inc.

The Board of Directors of North Star Home Health Management, Inc. consists of the following individuals:

**Charles H. Stuart**, Vice Chairperson  
(disclosed above)

**John B. Bielmiller**, Director  
(disclosed above)

**William A. Johnson, Jr.**, Director  
(disclosed above)

**Mordecai J. Kolko**, Director  
(disclosed above)

**Jagat S. Mehta, M.D.**, Director  
(disclosed above)

**Hilda Rosario-Escher**, Director  
(disclosed above)

**Seymour M. Zivan**, Director  
(disclosed above)

**Jordan I. Brown**, Treasurer  
(disclosed above)

**Marilyn Dollinger, R.N.**, Director  
(disclosed above)

**David H. Klein**, Director  
(disclosed above)

**John J. Mahoney**, Director  
(disclosed above)

**David D. Reh**, Director  
(disclosed above)

**Manuel M. Matos, M.D.**, Director  
(disclosed above)

The Board of Directors of Excellus Health Plan, Inc. consists of the following individuals:

**Randall L. Clark**, Chairperson  
Chairman, Dunn Tire, LLC

**Hermes L. Ames, III**, Director  
Retired  
Affiliations: Well Choice, Inc.  
(Empire BCBS)

**Austin T. Hildebrandt**, Director  
President, Hillside Children's  
Foundation

**John G. Doyle, Jr.**, Director  
President, Doyle Security Systems, Inc.

**Natalie L. Brown**, Director  
Executive Director, YWCA Mohawk Valley  
Affiliations: Faxton-St. Luke's Healthcare

**Thomas Y Hobart, Jr.**, Director  
Retired

**Dennis P. Kessler**, Director  
Owner, The Kessler Group, Inc.  
Owner, The Kessler Family, LLC  
Professor, University of Rochester  
Affiliations: Genesee Region  
Health Care of Ontario County, Inc.  
University of Rochester Medical Center

**Charles H. Stuart**, Director  
(disclosed above)

**David H. Klein**, Director  
(disclosed above)

**Joseph F. Kurnath, M.D.**, Director  
Physician/Partner, Partners in Internal Medicine  
Affiliations: Genesee Region Health Care of  
Ontario County, Inc.

**Patrick A. Mannion**, Director  
Chairman/President/CEO/COO, EVP  
& SVP, Unity Mutual Life Insurance  
Company

**Alfred D. Matt**, Director  
President/CEO, F.X. Matt Brewing Company

**Colleen E. O'Leary, M.D.**, Director  
Professor, SUNY Upstate Medical  
University

**Sandra A. Parker**, Director  
President/CEO, Rochester Business Alliance

**Thomas E. Rattmann**, Director  
Chairman/CEO/President, Columbian  
Financial Group

**George F.T. Yancey, Jr.**, Director  
Managing Director, Delta Point Capital

**William H. Goodrich**, Director  
CEO/President, LeChase Construction  
Affiliations: Excellus Health Plan, Inc.

The Board of Directors of Lifetime Healthcare, Inc. consists of the following individuals:

**Randall L. Clark**, Chairperson  
(disclosed above)

**Dennis P. Kessler**, Director  
(disclosed above)

**Hermes L. Ames, III**, Director  
(disclosed above)

**Natalie I. Brown**, Director  
(disclosed above)

**William H. Goodrich**, Director  
(disclosed above)

**John G. Doyle, Jr.**, Director  
(disclosed above)

**Austin T. Hildebrandt**, Director  
(disclosed above)

**Thomas Y. Hobart, Jr.**, Director  
(disclosed above)

**David H. Klein**, Director  
(disclosed above)

**Joseph F. Kurnath, M.D.**, Director  
(disclosed above)

**Patrick A. Mannion**, Director  
(disclosed above)

**Alfred D. Matt**, Director  
(disclosed above)

**Colleen E. O'Leary, M.D.**, Director  
(disclosed above)

**Sandra A. Parker**, Director  
(disclosed above)

**Thomas E. Rattmann**, Director  
(disclosed above)

**George F.T. Yancey, Jr.**, Director  
(disclosed above)

**Charles H. Stuart**, Director  
(disclosed above)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York State Physician Profile, and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licenses of the healthcare professionals associated with this application.

A ten year review of the operations of the following agencies/facilities was performed as part of this review (unless otherwise noted):

- Genesee Region Health Care of Ontario County, Inc. d/b/a Home Care Plus (LHCSA)
- Genesee Region Home Care Association, Inc. (hospice)
- Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (CHHA)
- Genesee Region Home Care Association, Inc. d/b/a Lifetime Care (LTHHCP)
- Sibley Nursing Personnel Services, Inc. (LHCSA) (2003 – present)
- Genesee Valley Group Health Association, Inc. d/b/a Lifetime Health Medical Group (2003 – present)
- Excellus Health Plan, Inc. d/b/a Finger Lakes HMO, Upstate HMO & Univera Health Care (HMO)
- Well Choice, Inc. (Empire BCBS) (HMO) (2000 – 2005)
- Faxton-St. Luke's Healthcare (hospital) (2001 – 2004)
- University of Rochester Medical Center (hospital) (1/04 – 2/12)

The Division of Certification and Surveillance has indicated the following:

Faxton-St. Luke's Healthcare was fined \$20,000 in 2003 for failure to maintain adequate oversight of a physician's practice with multiple quality issues.

University of Rochester Medical Center (Strong Memorial) was fined \$20,000 in 2004 for violations of the UNOS guidelines for organ transplants.

The information provided by the Division of Certification and Surveillance has determined that the hospitals reviewed have provided sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Bureau of Managed Care Certification and Surveillance has indicated that the HMOs reviewed have provided sufficient supervisory responsibility to protect 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 LHCSAs, CHHA, LTHHCP and hospice reviewed have provided sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Genesee Region Home Care Association, Inc. d/b/a Lifetime Care, North Star Home Health Management, Inc., Excellus Health Plan, Inc. and Lifetime Healthcare, Inc. to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

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:

|                                   |  |
|-----------------------------------|--|
| <i>Date:</i>                      | February 28, 2012  |
| <i>Seller:</i>                    | County of Yates  |
| <i>Buyer:</i>                     | Genesee Region Home Care Association, Inc.   |
| <i>Assets Transferred:</i>        | The home care business consisting of books and records, any permits and similar rights to the extent transferable and related solely to the operation of the home care business, patient medical records, and any contracts, leases or licenses. |
| <i>Assumed Liabilities:</i>       | None   |
| <i>Purchase Price:</i>            | \$800,000  |
| <i>Payment of Purchase Price:</i> | \$800,000 in cash at time of closing.  |

The applicant submitted an affidavit in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 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. Currently, there are no outstanding Medicaid overpayment liabilities.

### Operating Budget

The applicant has submitted an operating budget for the first year in 2012 dollars, which is summarized below:

|                            | <u>Year One</u>       |
|----------------------------|-----------------------|
| Revenues:                  |                       |
| Medicaid                   | \$342,841             |
| Medicare Managed Care      | 426,212               |
| Commercial Managed Care    | 559,760               |
| Commercial Fee-for-Service | 16,974                |
| Private Pay                | 45,965                |
| Charity Care               | <u>25,875</u>         |
| Total Revenues             | \$1,417,627           |
| <br>Expenses:              | <br><u>1,293,691</u>  |
| <br>Gain/(Loss):           | <br><u>\$ 123,936</u> |

The Medicaid budget is based on the new Episodic Payment System (EPS) effective May 1, 2012. The EPS is based on a price for 60 day episodes, 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 2011-2012 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.

Utilization by payor source in the first year is as follows:

|                            |     |
|----------------------------|-----|
| Medicaid Fee-for-Service   | 18% |
| Medicare Fee-for-Service   | 30% |
| Commercial Fee-for-Service | 44% |
| Commercial Managed Care    | 2%  |
| Charity Care               | 2%  |
| Private Pay                | 4%  |

Expense and utilization assumptions are based on the existing Yates County CHHA Program's historical experience. Revenues are reflective of current payment rates.

Capability and Feasibility

The operational purchase price of \$800,000 will be satisfied with equity from the applicant.

Working capital requirements estimated at \$215,616 based on two months' of first year expenses will be provided by cash equity from the applicant. Presented as BFA Attachment B, is the financial summary of the Genesee Home Care Association, Inc., which indicated the availability of sufficient funds.

The submitted budget projects an excess of revenues over expenses of \$123,936 during the first year subsequent to the change in operator. The submitted budget is based on Lifetime Care's experience in the operation of its CHHA and current reimbursement rates. The submitted budget appears reasonable.

As shown on BFA Attachment B, a financial summary of Genesee Region Home Care Association, Inc. indicates that the facility has maintained positive working capital and net assets positions, and generated annual operating revenues of \$1,827,000 and \$881,000 for 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.**

|                      |
|----------------------|
| <h2>Attachments</h2> |
|----------------------|

- |                  |   |
|------------------|---|
| BFA Attachment A | Organizational Chart  |
| BFA Attachment B | Financial Summary, Genesee Region Home Care Association, Inc. |
| BFA Attachment C | Pro-forma Balance Sheet                                       |



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 Yates County Certified Home Health Agency to Genesee Region Home Care Association, Inc., d/b/a Lifetime Care, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

121135 E

Genesee Region Home Care Association,  
Inc., d/b/a Lifetime Care

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 # 121182-E**  
**McAuley-Seton Home Care Corporation**

**County: Niagara (Lockport)**  
**Purpose: Construction**

**Program: Certified Home Health Agency**  
**Submitted: April 3, 2012**

## Executive Summary

### Description

McAuley-Seton Home Care Corporation (MSHC), an existing Article 36 not-for-profit corporation, requests approval to acquire Niagara County Department of Health's Certified Home Health Agency (CHHA) and Long Term Home Health Care Program (LTHHCP), which serves Niagara County. This application is the outcome of Niagara County Department of Health's Request for Proposals (RFP) to sell its CHHA and LTHHCP programs.

McAuley-Seton Home Care Corporation is part of the Catholic Health System (CHS), which includes other local long-term care facilities, acute care facilities, and health care related entities. CHS is jointly-sponsored by the Sisters of Mercy, Ascension Health System, the Franciscan Sisters of St. Joseph and the Diocese of Buffalo. Through its sponsorship by the Sisters of Mercy, CHS is affiliated with Catholic Health East.

DOH Recommendation  
Contingent approval.

### Need Summary

As this project involves only an acquisition of an existing CHHA and LTHHCP, no Need recommendation is required.

### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

### Financial Summary

The \$2,650,000 purchase price for Niagara County's CHHA and LTHHCP operating certificates will be provided from the applicant's liquid resources. There are no project costs associated with this application.

|                     |                     |                  |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 2,986,389     |
|                     | <i>Expenses:</i>    | <u>2,978,336</u> |
|                     | <i>Gain/(Loss):</i> | \$ 8,053         |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. The submission of executed operating certificate purchase agreement that is acceptable to the Department of Health. [BFA]

Council Action Date

**August 9, 2012.**

## Programmatic Analysis

### Background

McAuley Seton Home Care Corporation, a not-for-profit certified home health agency (CHHA) located in Cheektowaga, New York and approved to serve patients in Erie County, proposes to purchase, acquire and merge the Niagara County Department of Health certified home health agency (CHHA) and long term home health care program (LTHHCP). The sole member of McAuley Seton Home Care Corporation is Catholic Health System, Inc., a not-for-profit corporation. McAuley Seton Home Care Corporation is proposing a branch office to be located at 310 South Transit Road, Lockport, New York 14904 to serve Niagara County patients

The members of the Board of Directors of McAuley Seton Home Care Corporation consist of the following individuals:

**Li Lin**, Chairperson

Professor, University of Buffalo

Affiliation: Catholic Health,  
Catholic Health Home Care

**Mark A. Sullivan**, Secretary

Executive VP/COO, Catholic Health System

Affiliation: Catholic Health Home Care

**Clayton C. Osborne**, Treasurer

VP of Finance, Catholic Health System

Affiliation: Catholic Health Home Care

**Peter U. Bergmann**

CEO, Sisters of Charity Hospital

Affiliation: Catholic Health Acute Care,  
Sisters Hospital Foundation,  
Catholic Health Home Care,  
Good Samaritan Regional Medical Center

**Nils J. Gunnersen**

CEO, Bertrand Chaffee Hospital

Affiliation: Catholic Health Home Care

**Dennis R. Horrigan**

CEO/President, Catholic Medical Partners

Affiliation: Catholic Health Home Care

**Joyce A. Markiewicz, R.N.**

President/CEO, Catholic Health Home Care

Affiliation: Catholic Health Home Care

**Joseph D. McDonald**

President/CEO, Catholic Health System

Affiliation: HANYS, American Hospital  
Association, Canisius College

**Brian T. O'Herron**

Director of Clinical & Aging Services,

Monsignor Carr Institute

Affiliation: Quality Behavioral Health IPA,

Catholic Health Home Care

**Katherine L. Rogala-Scherer, R.N.**

Director of Case Management,

Roswell Park Cancer Institute

Affiliation: Catholic Health Home Care

**Miguel Santos**

Regional Consumer Advocate,

National Grid

Affiliation: Catholic Health Home Care

**Gary C. Tucker, R.N.**

COO, Mount St. Mary's Hospital

Affiliation: Catholic Health Home Care

**Sr. Sheila A. Walsh**

Director of Sisters Services,

Sisters of Mercy

**Monsignor Robert E. Zapfel**

Pastor, St. Leo the Great Church

Affiliation: Catholic Health,  
Catholic Health Acute Care

The members of the Board of Directors of Catholic Health System, Inc. consist of the following individuals:

**Dennis J. Dombek**, Chairperson

Retired

Affiliation: Catholic Health Acute Care

**James R. Boldt, C.P.A.** Vice Chairperson

Chairman/CEO, Computer Task Group

d/b/a CTG

**Sr. Margaret Tuley**, Secretary  
Board Chair, Mount St. Mary's Hospital  
and Health Center  
Affiliation: Mt. St. Mary's Hospital,  
Lourdes Hospital,  
Mt. St. Mary's Hospital & Our Lady of Peace, Inc.

**William K. Buscaglia, Jr., Esq.**, Treasurer  
Executive VP, Despirt Mosaic &  
Marble Co., Inc.

**Carlton N. Brock**  
VP East Great Lakes Area,  
US Division, St. Jude Medical S.C., Inc.

**Clotilde Dedecker**  
President/CEO, Community Foundation  
for Greater Buffalo

**Shelley C. Drake**  
President/Chairman, M&T Bank  
Charitable Foundation

**David J. Durante, M.D.**  
Self-employed Physician, Pulmonary Medicine  
and Critical Care

**Sr. Nancy J. Hoff**  
President, Sisters of Mercy  
Affiliation: St. James Mercy  
Health System, Holy Cross  
Health Ministries, Pittsburgh  
Mercy Health System

**Li Lin**  
(disclosed above)

**Ramesh Luther, M.D.**  
Physician, Digestive Health Physicians

**Joseph D. McDonald**  
(disclosed above)

**Kelli Arnold McLeod**  
VPI Team Leader Not-for-Profit Group  
HSBC Bank, N.A. USA

**John C. Notaro, M.D.**  
Primary Care Internist, Buffalo Medical Group

**Linus L. Ormsby, Jr.**  
Retired

**Jack Quinn, Jr.**  
President, Erie Community College

**Joseph A. Ralabate, M.D.**  
Self-employed Surgeon  
Chief of Surgery, Kenmore Mercy  
Hospital

**Sharon D. Randaccio**  
President, Performance Management  
Partners, Inc. (management consulting)

**Arthur A. Russ, Jr., Esq.**  
Retired

**Cary A. Vastola, D.O.**  
Managing Partner, Primary Care of Western  
New York  
Affiliation: Univera (Health Insurance)

**Cynthia A. Zane, R.N.**  
President, Hilbert College  
Affiliation: Catholic Health Acute Care

**Monsignor Robert E. Zapfel**  
(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 licenses of the health care professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

McAuley Seton Home Care Corporation proposes to offer the following health care services: audiology, home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy and speech language pathology.

A 10 year review of the operations of the following agencies/facilities was performed as part of this review (unless otherwise noted):

- Catholic Health Home Care (2003 – present)
- Father Baker Manor
- Kenmore Mercy Hospital
- Lourdes Hospital (2011 – present)
- McAuley Seton Home Care Corporation
- Mercy Hospital of Buffalo
- Mt. St. Mary's Hospital (2007 – present)
- Mt. St. Mary's Hospital & Our Lady of Peace, Inc. (2004 – present)
- Nazareth Nursing Home
- Niagara Home Maker Services (LHCSA)
- Sisters of Charity Hospital of Buffalo, NY
- St. Francis Home of Williamsville
- St. Elizabeth's Home of Lancaster, NY
- St. James Mercy Health System (2008 – present)
- St. Vincent's Home for the Aged
- Good Samaritan Regional Medical Center (PA) (2003 – 2006)
- Pittsburgh Mercy Health System (PA) (2008 – present)
- Holy Cross Health Ministries (FL) (2008 – present)

The Division of Certification and Surveillance has indicated the following:

St. James Mercy Health System was fined \$4,000 in 2003 based on failure of an on call physician to return to the hospital in a timely manner resulting in a death.

Sisters of Charity Hospital of Buffalo NY was fined \$14,000 in 2004 based on a case of delayed treatment for a newborn who died.

The information provided by the Division of Certification and Surveillance has indicated that the hospitals reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Division of Assisted Living has indicated the following:

St. Elizabeth's Home of Lancaster, NY was fined \$1,000 for a pursuant to a stipulation and order dated May 25, 2005 for surveillance findings of December 30, 2004. Deficiencies were found under 18 NYCRR 486.5(a)(4)(iii) Endangerment, and 18 NYCRR 487.7(d)(6)(iii)(a-b) Supervision.

St. Elizabeth's Home of Lancaster, NY was fined \$7,500 for a pursuant to a stipulation and order dated October 4, 2004 for surveillance findings of March 24, 2004. Deficiencies were found under 18 NYCRR 486.5(a)(4)(v) Systemic Endangerment, and 18 NYCRR 487.7(d)(1) Supervision.

The information provided by the Division of Assisted Living has indicated that the adult care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Bureau of Quality Assurance and Surveillance has indicated the following:

St. Francis of Williamsville was fined \$10,000 pursuant to a stipulation and order dated January 18, 2011 for surveillance findings of October 28, 2011. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

St. Francis of Williamsville was fined \$1,000 pursuant to a stipulation and order dated February 26, 2008 for surveillance findings of March 23, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care.

The information provided by the Bureau of Quality Assurance and Surveillance has indicated that the residential health care facilities 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 home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Pennsylvania Department of Health has indicated that the hospitals reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Department was not able to receive information from the State of Florida regarding the compliance history of Holy Cross Health Ministries.

Recommendation

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

## Financial Analysis

Total Project Cost and Financing

There are no project costs associated with this application.

Purchase Agreement

The change in ownership will be effectuated in accordance with a draft operating certificate purchase agreement, the terms of which are summarized below:

|                            |   |
|----------------------------|---|
| <i>Date:</i>               | March 1, 2012   |
| <i>Sellers:</i>            | County of Niagara, a political subdivision of New York State – also known as Niagara County Department of Health Nursing Division of CHHA and LTHHCP  |
| <i>Buyers:</i>             | McAuley Seton Home Care Corporation (MSHC)  |
| <i>Purchased:</i>          | Good and valid title to New York State Certified Home Health Agency (CHHA) operating certificate number 3101600 and New York State Long Term Home Health Care Program (LTHHCP) operating certificate number 3101901L. |
| <i>Assumed Liabilities</i> | No liabilities assumed  |
| <i>Purchase Price:</i>     | \$2,650,000   |
| <i>Payment Terms:</i>      | \$795,000 deposit<br>\$1,855,000 at closing (closing date will be determined after CON approval)  |

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 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.



Staffing Support Agreement

On March 1, 2012, the applicant entered into staffing agreements with Niagara County Department of Health to provide their CHHA and LTHHCP patients with medical social worker services at \$65.00 per visit. Also on March 1, 2012, the applicant entered into staffing agreements with Niagara County Department of Health to provide their CHHA and LTHHCP patients with physical therapy services at \$85.00 per visit. The contracts will end on February 28, 2013, but will remain in effect during review and renegotiation, if necessary.

Operating Budget

The applicant has submitted first and third years incremental operating budgets, in 2012 dollars, as summarized below:

| <u>Combine CHHA &amp; LTHHCP Services</u> | <u>Year One</u>  | <u>Year Third</u> |
|---|------------------|-------------------|
| Revenues                                  | \$2,718,742      | \$2,986,389       |
| Expenses                                  | <u>2,804,290</u> | <u>2,978,336</u>  |
| Net Income (Loss)                         | (\$85,548)       | \$8,053           |

| <u>CHHA Services</u> | <u>Year One</u>  | <u>Year Third</u> |
|----------------------|------------------|-------------------|
| Revenues             | \$1,630,437      | \$1,877,297       |
| Expenses             | <u>1,625,943</u> | <u>1,759,476</u>  |
| Net Income (Loss)    | \$4,494          | \$117,821         |

| <u>LTHHCP Services</u> | <u>Year One</u>  | <u>Year Third</u> |
|------------------------|------------------|-------------------|
| Revenues               | \$1,088,305      | \$1,109,092       |
| Expenses               | <u>1,178,347</u> | <u>1,218,860</u>  |
| Net Income (Loss)      | (\$90,042)       | (109,768)         |

Expenses and utilization for LTHHCP are detailed as follows:

LTHHCP – Year One

| <u>Service</u>          | <u>Total Cost</u> | <u>Visits/Hours</u> | <u>Cost/Visit/Hour</u> |
|-------------------------|-------------------|---------------------|------------------------|
| Nursing                 | \$295,693         | 2,546               | \$116.14               |
| Physical Therapy        | 122,961           | 1,169               | 105.18                 |
| Speech Pathology        | 2,349             | 18                  | 130.50                 |
| Occupational Therapy    | 30,735            | 292                 | 105.26                 |
| Home Health Aide *      | 359,385           | 10,806              | 33.26                  |
| Personal Care*          | 283,477           | 7,498               | 37.81                  |
| Medical Social Services | <u>83,747</u>     | 857                 | 97.72                  |
| Total                   | \$1,178,347       |                     |                        |

\*Presented in hours.

Utilization by payor source for the first & third year is anticipated as follows:

|                              | <u>CHHA</u> | <u>LTHHCP</u> |
|------------------------------|-------------|---------------|
| Medicaid - Fee-for-Service   | 25.0%       | 84.1%         |
| Medicare - Fee-for-Service   | 33.6%       | 10.1%         |
| Commercial - Fee-for-Service | 39.4%       | 3.8%          |
| Charity Care                 | 2.0%        | 2.0%          |

Utilization projections were based upon Niagara County’s current cost reports plus analyzing data from facilities operating within the proposed service area. Direct expenses were based upon volume and expected productivity while other expenses were estimated based on a percentage of revenue.

The average CHHA Medicaid episode payment is expected to be \$3,323.07, which has been adjusted for the local wage index factor for Western New York of .903208 along with case mix factor of .6531488. The applicant states the case mix is based on a straight average from current patients.

#### Capability and Feasibility

There are no project costs associated with this application. The \$2,650,000 purchase price for Niagara County's CHHA and LTHHCP will be funded from McAuley Seton Home Care liquid resources. Presented as BFA Attachment A is McAuley Seton Home Care Corporation 2010 and 2011 certified financial summary, which shows sufficient resources for this purpose

Working capital requirements are estimated at \$496,389, which appears reasonable based upon two months of third year expenses. A review of BFA Attachment A demonstrates that McAuley Seton Home Care has the ability to provide the financial support needed for this project.

The budgets project an overall first year operating loss of \$85,548 and an operating surplus of \$8,053 for year three. The CHHA budget shows an operating surplus in both the first and third years of \$4,494 and \$117,821, respectively. The applicant said that in creating the profit and loss statement for the LTHHCP, they took the Medicaid Redesign Team's recommendations into careful consideration and developed a very conservative forecast. The applicant further states that they are committed to assuring the present patients in Niagara County's LTHHCP will be provided with a continuum of care, and the overall surplus by the third year of operations indicates the project is viable. The budget appears to be reasonable.

As shown on BFA Attachment A, McAuley Seton Home Care Corporation had an average excess of revenues over expenses of \$1,997,796, and had an average positive working capital and net asset position.

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

#### Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Financial Summary for 2010 and 2011, McAuley Seton Home Care Corporation |
| BFA Attachment B | Organizational Chart   |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 and merge Niagara County Department of Health's Certified Home Health Agency (CHHA) and Long Term Home Health Care Program (LTHHCP), 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

121182 E

McAuley-Seton Home Care Corporation

APPROVAL CONTINGENT UPON:

1. The submission of executed operating certificate purchase agreement that is acceptable to the Department of Health. [BFA]

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

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Clinton County Health Department  
Address: Plattsburgh  
County: Clinton  
Structure: Public  
Application Number: 2141L

Description of Project:

Clinton County Health Department requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The county currently operates a certified home health agency and long term home health care program which they are planning on selling. Clinton County is requesting approval to open a licensed home care services agency to enable the county to continue to provide essential public health nursing services in the event the CHHA and LTHHCP are sold.

The applicant proposes to serve the residents of Clinton County from an office located at 133 Margaret Street, Plattsburgh, New York 12901.

The applicant proposes to provide the following health care services:

Nursing            Medical Social Services.

Clinton County Health Department Division of Nursing currently operates a Diagnostic and Treatment Center, Certified Home Health Agency and Long Term Home Health Care Program.

The information provided by the Division of Certification and Surveillance indicated that the Diagnostic and Treatment Center has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services indicated that the Certified Home Health Agency and Long Term Home Health Care Program have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: July 19, 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 9<sup>th</sup> day of August, 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:  
2141 L

FACILITY:  
Clinton County Health Department  
(Clinton County)

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

**August 9, 2012**

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**Book B**

**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**

**Certified Home Health Agencies – Construction**

**Exhibit #18**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|--|---|
| 1. | 121210 C             | HHC Health and Home Care<br>(New York County)<br>Mr. Fassler – Interest<br>Dr. Martin – Interest<br>Ms. Regan – Interest<br>Dr. Sullivan – Recusal | Contingent Approval                       |
| 2. | 121226 C             | Nursing Sisters Home Care,<br>Inc. d/b/a Catholic Home Care<br>(Suffolk County)<br>Ms. Regan - Interest  | Contingent Approval                       |
| 3. | 121249 C             | Visiting Nurse Services in<br>Westchester, Inc.<br>(Westchester County)<br>Ms. Regan – Interest<br>Ms. Hines – Abstaining                          | Contingent Approval                       |
| 4. | 121212 C             | Dominican Sisters Family<br>Health Service, Inc.<br>(Westchester County)<br>Ms. Regan – Interest   | Contingent Approval                       |

- |    |          |   |                     |
|----|----------|---|---------------------|
| 5. | 121243 C | United Odd Fellow and<br>Rebekah Home LTHHCP<br>(Bronx County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest                  | Contingent Approval |
| 6. | 121216 C | Visiting Nurse Association of<br>Long Island, Inc.<br>(Nassau County)<br>Ms. Regan – Interest                                     | Contingent Approval |
| 7. | 121291 C | The Wartburg Home<br>(Westchester County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest                                       | Contingent Approval |
| 8. | 121448 C | UPR Care Corp., Inc. d/b/a<br>Cold Spring Hills Center for<br>Nursing & Rehabilitation<br>(Nassau County)<br>Ms. Regan – Interest | Contingent Approval |
| 9. | 121424 C | VillageCare Long Term Home<br>Health Care Program<br>(New York County)<br>Mr. Kraut – Interest<br>Ms. Regan – Interest            | Contingent Approval |





# Public Health and Health Planning Council

## Project # 121210-C HHC Health and Home Care

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

**Program:** Certified Home Health Agency  
**Submitted:** April 13, 2012

### Executive Summary

#### Description

The Health and Home Care (H&HC) Division of New York City Health and Hospitals Corporation (HHC), an existing public municipality, is requesting approval to expand their existing certified home health agency (CHHA) services into Kings County. HHC Health and Home Care currently serves Bronx, Queens and New York counties.

The applicant proposes to expand the service area of the existing CHHA into Kings County. The applicant plans to establish a new branch office to be located at 160 Water Street, New York, NY 10038 to serve the residents of Kings County.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new CHHAs or expand the approved geographic service areas and/or approved population of existing CHHA's. HHC Health and Home Care submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Approval.

Need Summary  
NYC HHC Health & Home Care Division's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary  
NYC HHC is currently in compliance with all applicable codes, rules and regulations.

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

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 18,142,525     |
|                     | <i>Expenses:</i>    | <u>17,969,226</u> |
|                     | <i>Gain/(Loss):</i> | \$ 173,299        |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**



## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

NYC HHC Health & Home Care Division's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the

organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

## Programmatic Analysis

Background

New York City Health and Hospitals Corporation (NYC HHC) currently operates a certified home health agency with approval to serve Bronx, New York and Queens counties.

The applicant proposes to expand the service area of the existing CHHA into Kings County. The applicant plans to establish a new branch office to be located at 160 Water Street, New York, NY 10038 to serve the residents of Kings County.

NYC HHC proposes to offer the following health care services: nursing, home health aide, medical supply, equipment and appliances, audiology, homemaker, housekeeper, medical social services, nutritional, personal care, physician services, occupational therapy, physical therapy, respiratory therapy and speech language pathology.

NYC HHC is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

## Financial Analysis

Operating Budget

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

|                          | <u>Year One</u>  | <u>Year Three</u> |
|--------------------------|------------------|-------------------|
| <u>Revenues:</u>         |                  |                   |
| Medicaid                 | \$764,013        | \$ 4,021,120      |
| Medicare                 | 637,337          | 3,354,405         |
| Commercial               | 355,195          | 1,892,973         |
| Commercial-Managed Care* | 507,843          | 2,716,047         |
| Private Pay/Other**      | <u>1,182,692</u> | <u>6,157,980</u>  |
| Total Revenues           | \$3,447,080      | \$18,142,525      |
| <br>                     |                  |                   |
| Expenses                 | <u>4,328,283</u> | <u>17,969,226</u> |
| <br>                     |                  |                   |
| Net Gain(Loss)           | \$ (881,203)     | \$ 173,299        |

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

| <u>Payor</u>               | <u>Years One and Three</u> |
|----------------------------|----------------------------|
| Commercial Managed Care*   | 36.8%                      |
| Commercial Fee-For-Service | 23.2%                      |
| Medicare Fee-For-Service   | 5.3%                       |
| Medicaid Fee-For-Service   | 7.7%                       |
| Private Pay/Other**        | 25.0%                      |
| Charity Care               | 2.0%                       |

\* Represents Fedilis, Health First, and Metro Plus.

\*\*Other represents the personal assistance program and home attendant program to be converted to managed care.

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment system.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$2,994,871, appear reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve a net loss of \$881,203 and a net gain of \$173,299 incremental net revenue in the first and third years of operations, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. The submitted budget appears reasonable.

Presented as BFA Attachment A is the audited financial summary of New York City Health and Hospitals Corporation in which HHC Health and Home Care is a Division within the system. As shown on BFA Attachment A, the June 30, 2011 financials shows the applicant has maintained positive working capital and experienced deficit net assets and a net loss of \$442,534,000 from operations for 2011. HHC relies on supplemental Medicaid Disproportionate Share Hospital and Upper Payment Limit funds to support its operations, which are estimated at \$1,722,000,000 for fiscal year 2012. HHC has implemented the following management initiatives as of May 2010 into 2014 to increase income from operations:

- Phase I-\$300 million in benefits resulting in a hiring freeze, a reduction in supply costs, improved utilization management, and enhanced collection through improved documentation and coding.
- Phase II-\$300 million in savings through a restructuring program and the implementation of future initiatives to be in place by 2014. These initiatives include this application.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner.

#### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary for New York City Health and Hospitals Corporation, June 30, 2011                                       |
| BFA Attachment B | Financial Summary for New York City Health and Hospitals Corporation, Home and Health Care Division, draft 2012 projected |



# Public Health and Health Planning Council

**Project # 121226-C**  
**Nursing Sisters Home Care, Inc.**  
**d/b/a Catholic Home Care**

**County: Suffolk (Holtsville)**  
**Purpose: Construction**

**Program: Certified Home Health Agency**  
**Submitted: April 17, 2012**

## Executive Summary

### Description

Nursing Sisters Home Care, Inc. d/b/a Catholic Home Care, an existing voluntary, not-for-profit, Certified Home Health Agency (CHHA), is requesting to expand their existing CHHA into Queens County. Catholic Home Care currently serves Nassau and Suffolk counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Nursing Sisters Home Care, Inc. d/b/a Catholic Home Care submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, budgets were sensitized.

DOH Recommendation  
Approval.

### Need Summary

Nursing Sisters Home Care, Inc. d/b/a Catholic Home Care's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

### Program Summary

Nursing Sisters Home Care, Inc. d/b/a Catholic Home Care is currently in compliance with all applicable codes, rules and regulations.

### Financial Summary

There are no project costs associated with this application.

|                     |                     |                  |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 5,544,283     |
|                     | <i>Expenses:</i>    | <u>4,738,474</u> |
|                     | <i>Gain/(Loss):</i> | \$ 805,809       |

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

## Recommendations

Health Systems Agency

There is no HSA recommendation for this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**



## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Nursing Sisters Home Care, Inc. d/b/a Catholic Home Care's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to

produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

**Programmatic Analysis**

Background

Nursing Sisters Home Care Inc. dba Catholic Home Care is an existing not-for-profit corporation that operates a certified home health agency (CHHA) with approval to provide services in Nassau and Suffolk Counties.

The applicant proposes to expand the service area of their CHHA into Queens County and will serve the residents of Queens County from their existing branch office located in Rockville Centre.

Catholic Home Care proposes to provide the following home health services to residents of Queens County: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy and speech language pathology.

Nursing Sisters Home Care, Inc. d/b/a Catholic Home Care is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

**Financial Analysis**

Operating Budget

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

|                  | <u>Year One</u>  | <u>Year Three</u> |
|------------------|------------------|-------------------|
| <u>Revenues:</u> |                  |                   |
| Medicaid         | \$ 303,109       | \$1,151,894       |
| Medicare         | 754,555          | 3,129,185         |
| Commercial       | <u>304,603</u>   | <u>1,263,204</u>  |
| Total Revenues   | \$1,362,266      | \$5,544,283       |
| <br>             |                  |                   |
| Expenses         | <u>1,208,181</u> | <u>4,738,474</u>  |
| <br>             |                  |                   |
| Net Gain(Loss)   | \$ 154,085       | \$ 805,809        |

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

|                          | <u>Years One and Three</u> |
|--------------------------|----------------------------|
| Commercial Managed Care  | 25.0%                      |
| Medicare Fee-for-Service | 48.0%                      |
| Medicaid Managed Care    | 25.0%                      |
| Charity Care             | 2.0%                       |

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. 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 and year three for a conservative approach.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$789,746, appear reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve a \$154,085 and \$805,809 incremental net revenue in the first and third years of operations, respectively.

Revenue is based on current payment rates for Certified Home Health Agencies. DOH staff has sensitized the budgets to reflect the effect of the EPS payments. Presented on BFA Attachment C is the sensitivity analysis. The submitted budget appears reasonable.

Presented as BFA Attachment B is the draft financial summary of Catholic Home Care which shows the applicant has experienced negative working capital and net deficit and achieved net loss of \$18,543,000 from operations for 2011. The applicant experienced negative working capital, net deficit and net operating loss in 2011. Catholic Home Care has set up a task force and monitoring team to take corrective action to increase revenues by enhancing reporting mechanisms and focusing on a new Medicaid episodic payment system, and by decreasing expenses through staff reductions and making changes to self-insured employee medical benefits.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner.

#### Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Organizational Chart of Catholic Health Services of Long Island  |
| BFA Attachment B | Financial Summary for Catholic Home Care, draft 2011             |
| BFA Attachment C | Financial Summary for Catholic Home Care, May 31, 2012 internals |
| BFA Attachment D | Sensitivity Analysis for Episodic Payment System                 |



# Public Health and Health Planning Council

## Project # 121249-C Visiting Nurse Services in Westchester, Inc.

**County:** Westchester (White Plains)  
**Purpose:** Construction

**Program:** Certified Home Health Agency  
**Submitted:** April 18, 2012

### Executive Summary

#### Description

Visiting Nurse Services in Westchester, Inc., an existing not-for-profit corporation, requests approval to expand its CHHA services to residents in Dutchess, Rockland and Bronx Counties. The CHHA will offer the following services: nursing, physical therapy, speech therapy, occupational therapy, medical social services and home health aide. The applicant's parent corporation is Westchester Visiting Nurse Services Group, Inc.

The applicant also requested approval to serve the following upstate counties: Dutchess and Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties.

On December 8, 2011, the Public Health and Planning Council adopted an amendment to Section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Visiting Nurse Services in Westchester, Inc. submitted an application in response to the competitive RFA and was awarded RFA approval. This CON application is in response to the RFA approval.

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 (MAT proposal #5) and

authorized in the 2011-2012 enacted budget. The EPS is designed to address the issue of rapid growth in Medicaid costs per patient by better aligning payments with needed service and is part to a broad effort to promote the development of care management arrangements for Medicaid recipients.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

#### DOH Recommendation

Disapproval as proposed. Contingent approval as amended by the Department, to serve Bronx county.

#### Need Summary

Visiting Nurse Services in Westchester, Inc.'s (VNSW) proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

#### Program Summary

Visiting Nurse Services in Westchester, Inc. is currently in compliance with all applicable codes, rules and regulations.

#### Financial Summary

There are no project costs associated with this application.

|         |              |                  |
|---------|--------------|------------------|
| Budget: | Revenues:    | \$ 1,809,196     |
|         | Expenses:    | <u>1,741,574</u> |
|         | Gain/(Loss): | \$ 67,622        |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion that are acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Visiting Nurse Services in Westchester, Inc.'s (VNSW) proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant

has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

The applicant also requested approval to serve the following upstate counties: Dutchess and Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties.

Recommendation

**From a need perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

Programmatic Analysis

Background

Visiting Nurse Services in Westchester, Inc., an existing not-for-profit corporation which operates a certified home health agency with approval to serve Westchester and Putnam counties.

The applicant proposes to expand their service area of the existing CHHA into Bronx, Dutchess, and Rockland counties. Visiting Nurse Services in Westchester, Inc. proposes to serve these counties from their existing offices and does not contemplate opening any additional branch offices to serve the expanded service area at this time.

Visiting Nurse Services in Westchester, Inc. proposes to provide the following home health services to Dutchess, Rockland and Bronx Counties: nursing, home health aide, physical therapy, occupational therapy, speech language pathology, medical social services and medical supply, equipment and appliances.

The applicant also requested approval to serve the following upstate counties: Dutchess and Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties.

Visiting Nurse Services in Westchester, Inc. is currently in compliance with all applicable codes, rules and regulations.

Recommendation

**From a programmatic perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

Financial Analysis

Operating Budget

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

|                          | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Revenues:                |                 |                   |
| Medicaid Fee-For-Service | \$464,080       | \$584,957         |
| Medicare Fee-For-Service | 690,702         | 1,021,037         |

|                                  |                   |                  |
|----------------------------------|-------------------|------------------|
| Commercial Fee-For-Service       | 19,738            | 26,696           |
| Private Pay                      | 710               | 1,136            |
| Other                            | <u>116,724</u>    | <u>175,370</u>   |
| Total Revenues                   | \$1,291,954       | \$1,809,196      |
| Expenses                         | <u>1,345,069</u>  | <u>1,741,574</u> |
| Excess of Revenues over Expenses | <u>(\$53,115)</u> | <u>\$67,622</u>  |

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

|                            | <u>Year One</u> | <u>Year Three</u> |
|----------------------------|-----------------|-------------------|
| Medicaid Fee-For-Service   | 55.12%          | 51.53%            |
| Medicare Fee-For-Service   | 38.33%          | 42.13%            |
| Commercial Fee-For-Service | .70%            | .59%              |
| Private Pay                | .02%            | .02%              |
| Other                      | 3.83%           | 3.73%             |
| Charity Care               | 2.00%           | 2.00%             |

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$290,262, appear reasonable based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment A are the 2011 certified financial statements of the parent, Westchester Visiting Nurse Services Group, Inc. and subsidiaries, which indicates the availability of sufficient funds to meet the working capital contribution.

The submitted budget indicates an excess of revenues over expenses of (\$53,115) and \$67,622 during the first and third years, respectively. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

As shown on Attachment A, the entity had a positive working capital position and a positive net asset position in 2011. The entity incurred an operating loss of \$1,552,490 during 2011. Westchester Visiting Nurse Services Group, Inc. also includes Westchester Care at Home, a licensed home care agency. The applicant has indicated that the losses were the result of the losses attributed to Visiting Nurse Services in Westchester, Inc., which will be discussed further in a subsequent section. The losses were also the result of losses by Westchester Care at Home (WCAH), the licensed home care agency, due to the following: the licensed home care agency was required to refund a total of \$649,000 as part of the Medicaid recoupment/elimination of the trend factor, and during 2010, the State of New York Office of the Medicaid Inspector General (OMIG) conducted an audit of WCAH and found overpayments made to the facility of \$469,341.

Presented as BFA Attachment B is the 2011 certified financial statements of Visiting Nurse Services in Westchester, Inc. As shown on Attachment B, the facility had a negative working capital position and a positive net asset position in 2011. The facility incurred an operating excess of revenues over expenses of (\$1,085,379) in 2011. The applicant has indicated that the reason for the loss is the facility incurred a one-time and non-recurring severances for former key management personnel totaling \$507,000; incurred approximately \$784,000 relating to marketing and promotional materials, of which \$559,000 are one-time non-recurring costs related to media advertising. In 2012, the facility has taken steps to improve operations by maximizing productivity of service delivery staff.

Presented as BFA Attachment C are the May 31, 2012 internal financial statements of Visiting Nurse Services in Westchester, Inc. As shown on Attachment C, the facility had a negative working capital position and a positive net asset position through May 31, 2012. The applicant incurred an operating loss of \$133,700 through May 31, 2012.



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

Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | 2011 Certified financial statements of Westchester Visiting Nurse Services Group, Inc.     |
| BFA Attachment B | 2011 Certified financial statements of Visiting Nurse Services in Westchester, Inc.        |
| BFA Attachment C | May 31, 2012 internal financial statements of Visiting Nurse Services in Westchester, Inc. |



# Public Health and Health Planning Council

Project # 121212-C  
**Dominican Sisters Family Health Service, Inc.**

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

**Program: Certified Home Health Agency**  
**Submitted: April 16, 2012**

## Executive Summary

### Description

Dominican Sisters Family Health Services, Inc. (DSFHS), an existing not-for profit corporation, which operates a full service Certified Home Health Agency (CHHA), Long Term Home Health Care Program (LTHHCP) and an AIDS Home Care Program (AHCP), is requesting to expand their existing certified home health agency (CHHA) into Kings, Nassau, New York, Orange, Putnam, Queens, Rockland and Richmond counties.

The applicant also requested approval to serve the following upstate counties: Orange, Putnam and Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. DSFHS submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

### DOH Recommendation

Disapproval as proposed. Contingent approval as amended by the Department, to serve Kings, Nassau, New York, Queens, and Richmond counties.

### Need Summary

DSFHS's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

### Program Summary

DSFHS is currently in compliance with all applicable codes, rules and regulations.

### Financial Summary

There are no project costs associated with this application.

|                     |              |                  |
|---------------------|--------------|------------------|
| Incremental Budget: | Revenues:    | \$ 7,473,806     |
|                     | Expenses:    | <u>5,972,321</u> |
|                     | Gain/(Loss): | \$ 1,501,485     |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion that are acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Dominican Sisters Family Health Service, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has

the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

The applicant also requested approval to serve the following upstate counties: Orange, Putnam and Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties.

Recommendation

**From a need perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

## Programmatic Analysis

Background

Dominican Sisters Family Health Service, Inc. is an existing not-for-profit corporation which operates a certified home health agency (CHHA), long term home health care program (LTHHCP) and an AIDS home care program (AHCP). Dominican Sisters Family Health Service, Inc.'s CHHA is currently authorized to serve patients in Westchester, Bronx and Suffolk counties and their LTHHCP and AIDS home care program is currently authorized to serve patients in Bronx, Kings, New York, Queens, Suffolk and Westchester counties.

The applicant proposes to expand service area of the existing CHHA into Kings, Nassau, New York, Queens, Richmond, Orange, Putnam, and Rockland counties. Dominican Sisters Family Health Service, Inc. will serve these counties from their existing offices and does not contemplate opening any additional branch offices to serve the expanded service area at this time.

Dominican Sisters Family Health Service, Inc. proposes to provide the following health care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy and speech language pathology.

Dominican Sisters Family Health Service, Inc. is currently in compliance with all applicable codes, rules and regulations.

The applicant also requested approval to serve the following upstate counties: Orange, Putnam and Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties.

Recommendation

**From a programmatic perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

## Financial Analysis

Operating Budget

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

|                | <u>Year One</u>    | <u>Year Three</u>  |
|----------------|--------------------|--------------------|
| Revenues:      |                    |                    |
| Medicaid       | \$575,456          | \$1,461,529        |
| Medicare       | 1,575,688          | 4,283,210          |
| Commercial     | <u>636,081</u>     | <u>1,729,066</u>   |
| Total Revenues | \$2,787,226        | \$7,473,806        |
| Expenses       | <u>\$2,293,872</u> | <u>\$5,972,321</u> |
| Net Gain(Loss) | \$493,354          | \$1,501,485        |

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

|                          | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Commercial Managed Care  | 24.70%          | 24.68%            |
| Medicare Fee-for-service | 48.70%          | 48.67%            |
| Medicaid Managed Care    | 24.60%          | 24.65%            |
| Charity Care             | 2.00%           | 2.00%             |

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. 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 and year three for a conservative approach.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$995,387, which appears reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve incremental net revenue in the first and third years of operations of \$493,354 and 1,501,485, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. DOH staff has sensitized the budgets to reflect the effect of the EPS payments. Presented on BFA Attachment C is the sensitivity analysis. The submitted budget appears reasonable.

Presented as BFA Attachment A is the audited financial summary of Dominican Sisters Family Health Services, Inc., which shows the applicant has maintained a negative working capital position and a positive net asset position and achieved an average net loss of \$164,330 from operations for the period 2010 through 2011. The loss in 2011 was \$746,500 and it is attributable to a 6% decrease in the Medicare Episodic rates and the 2% decrease in the Medicaid rates, which both went into effect in 2011. The facility has made adjustments to its operating expenses and has increased its Medicare case mix in order to maintain a positive operating margin. BFA Attachment B shows the internal 2012 financial summary ending May 31, 2012. The applicant continues to maintain a negative working capital position and a positive net asset position as well as a negative net income position. The reason for the negative net income is due to a retroactive adjustment to the agency's 2011 Medicaid rate, which was posted in May 2012, and the other loss through May that caused a negative net income was due to the acquisition of Elizabeth Seton Pediatric LTHHCP. The loss is due to the facility having a lower than anticipated census caused by the delays in closing the Elizabeth Seton program and transferring the patients to Dominican Sisters. Once the program has come back up to full capacity, the applicant projects that they will again be operating at a positive net income.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner, and contingent approval is recommended.

#### Recommendation

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

## Attachments

- BFA Attachment A      Financial Summary for Dominican Sisters Family Health Services, Inc ( 2011 and 2010)
- BFA Attachment B      Financial Summary for Dominican Sisters Family Health Services, Inc , May 31, 2012
- BFA Attachment C      Sensitivity Analysis for Episodic Payment System



# Public Health and Health Planning Council

## Project # 121243-C United Odd Fellow and Rebekah Home LTHHCP

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

**Program:** Certified Home Health Agency  
**Submitted:** April 18, 2012

### Executive Summary

#### Description

Rebekah Rehabilitation and Extended Care Center, a 215-bed not-for-profit skilled nursing facility located in Bronx County, requests approval to expand the long term home health care program (LTHHCP) by establishing a certified home health care agency (CHHA) to serve the residents of Bronx County. The CHHA would provide the following services: Nursing, physical therapy, speech therapy, occupational therapy, medical social services, home health aides and nutrition services. The applicant operates a LTHHCP that is called United Odd Fellow and Rebekah Home LTHHCP.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. United Odd Fellow and Rebekah Home submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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, 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 2011-2012 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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Approval.

Need Summary  
Rebekah Rehab Certified Home Health Agency's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary  
United Odd Fellow and Rebekah Home, Inc. is currently in compliance with all applicable codes, rules and regulations.

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

|                     |              |                   |
|---------------------|--------------|-------------------|
| Incremental Budget: | Revenues:    | \$ 11,042,912     |
|                     | Expenses:    | <u>10,772,977</u> |
|                     | Gain/(Loss): | \$ 269,935        |

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



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Rebekah Rehab Certified Home Health Agency’s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

**Programmatic Analysis**

Background

United Odd Fellow and Rebekah Home, Inc, is an existing not-for-profit corporation that operates an Article 28 residential health care facility and an Article 36 long term home health care program with approval to provide services in Bronx County.

The applicant proposes to establish an Article 36 certified home health agency to serve the residents of Bronx County and will continue to operate the long term home health care program. The CHHA will be operated out of the offices that currently house the LTHHCP which are located at 1040 Havemeyer Avenue, Bronx, NY 10462..

The applicant proposes to provide the following home health services: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy and speech language pathology.

United Odd Fellow and Rebekah Home, Inc. is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

**Financial Analysis**

Operating Budget

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

|                          | <u>Year One</u>     | <u>Year Three</u>    |
|--------------------------|---------------------|----------------------|
| Medicaid Fee-for-Service | \$1,773,754         | \$1,650,440          |
| Medicaid Managed Care    | 1,705,625           | 6,349,410            |
| Medicare Fee-for-Service | 1,107,940           | 2,693,862            |
| Medicare Managed Care    | 131,330             | 316,800              |
| Other                    | <u>13,500</u>       | <u>32,400</u>        |
| Total Revenues           | \$4,732,149         | \$11,042,912         |
| <br>Expenses             | <br>4,691,227       | <br>10,772,977       |
| <br>Net Gain (Loss)      | <br><u>\$40,922</u> | <br><u>\$269,935</u> |

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

|                          | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Medicaid Fee-for-Service | 36%             | 16%               |
| Medicaid Managed Care    | 36%             | 57%               |
| Medicare Fee-for-Service | 22%             | 22%               |
| Medicare Managed Care    | 3%              | 2%                |
| Charity Care             | 3%              | 3%                |

Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. Expense assumptions are based on salaries in the area for CHHA services. Utilization assumptions are based on the applicant's discussions with former nurses currently employed by the applicant's long term home health team.

There are no project costs associated with this application.

Working capital requirements, estimated at \$1,795,496, appear reasonable based on two months of third year expenses. Presented as BFA Attachment B is the draft financial statements of United Odd Fellow and Rebekah Home d/b/a Rebekah Rehab and Extended Care Center, which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirements.

The submitted budget indicates that the applicant will achieve an excess of revenues over expenses of \$40,922 and \$269,935 during the first and third years, respectively. Revenues are based on current payment rates as well as recent implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable. Presented as BFA Attachment A are the 2010 and 2011 financial statements. Year 2010 is certified and 2011 is a year end draft financial statement of United Odd Fellow and Rebekah Home LTHHCP. As shown on Attachment A, the entity had an average positive working capital position and an average positive net asset position. Also, the applicant has indicated an excess of revenues over expenses of \$601,049 in 2011 and an operating loss of \$486,728 in 2010. The reason for the loss was a prior year positive rate adjustment of \$733,709, which was received in 2011. Upon pending re-statement of the 2010 financial statements, they would now reflect an excess of revenues over expenses of \$246,981. Attached are March 2012 year to date internals, which indicate a positive working capital position and positive net asset position. Also, the applicant indicates an excess of revenues over expenses of \$56,000.

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- United Odd Fellow and Rebekah Home LTHHCP    |
| BFA Attachment B | Internal Financial Summary – United Odd Fellow and Rebekah Home |



# Public Health and Health Planning Council

Project # 121216-C  
**Visiting Nurse Association of Long Island, Inc.**

**County:** Nassau (Garden City)  
**Purpose:** Construction

**Program:** Certified Home Health Agency  
**Submitted:** April 16, 2012

## Executive Summary

### Description

Visiting Nursing Association of Long Island, Inc. (VNA of Long Island), an existing not-for profit Certified Home Health Agency (CHHA) and Long Term Home Health Care Program (LTHHC) provider, requests approval to expand their existing certified home health agency (CHHA) into Suffolk and Kings Counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. VNA of Long Island submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to

episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Approval.

### Need Summary

Visiting Nurse Association of Long Island, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

### Program Summary

Visiting Nurse Association of Long Island, Inc. is currently in compliance with all applicable codes, rules and regulations.

### Financial Summary

There are no project costs associated with this application.

|                     |                     |                |
|---------------------|---------------------|----------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 673,875     |
|                     | <i>Expenses:</i>    | <u>650,639</u> |
|                     | <i>Gain/(Loss):</i> | \$ 23,236      |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Visiting Nurse Association of Long Island, Inc.'s (VNALI) proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant

has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

**Programmatic Analysis**

Background

Visiting Nurse Association of Long Island, Inc. is an existing not-for-profit corporation which operates a certified home health agency (CHHA) and long term home health care program (LTHHCP) provider. The CHHA operated by Visiting Nurse Association of Long Island, Inc. is approved to provide services in Nassau and Queens counties and the LTHHCP is approved to provide services in Nassau, Suffolk and Queens counties.

Visiting Nurse Association of Long Island, Inc. proposes to expand the service area of their CHHA into Kings and Suffolk Counties. Visiting Nurse Association of Long Island, Inc. proposes to serve these counties from their existing offices.

Visiting Nurse Association of Long Island, Inc. plans to offer the following home health services in Kings and Suffolk Counties: nursing, home health aide, physical therapy, occupational therapy, speech language pathology, medical social services, nutrition and medical supply, equipment and appliances.

Visiting Nurse Association of Long Island, Inc. is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

**Financial Analysis**

Operating Budget

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

|                          | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Revenues:                |                 |                   |
| Medicaid                 | \$43,900        | \$117,460         |
| Medicare                 | 158,797         | 438,375           |
| Commercial-FFS           | 7,980           | 31,180            |
| Commercial- Managed Care | <u>25,415</u>   | <u>86,860</u>     |
| Total Revenues           | \$236,092       | \$673,875         |
| <br>                     |                 |                   |
| Expenses                 | 245,388         | 650,639           |
| <br>                     |                 |                   |
| Net Gain (Loss)          | (\$9,296)       | \$23,236          |



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

| <u>Payor</u>             | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Medicare                 | 55.54%          | 55.65%            |
| Medicaid                 | 19.92%          | 19.87%            |
| Commercial-FFS           | 4.39%           | 4.38%             |
| Commercial- Managed Care | 18.15%          | 18.10%            |
| Charity Care             | 2.00%           | 2.00%             |

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment system.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$108,440, appear reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve a (\$9,296) and \$23,236 incremental net revenue in the first and third years of operations, respectively.

First year loss will be funded through applicants' existing operations. Revenue is based on current payment rates for Certified Home Health Agencies. The submitted budget appears reasonable.

Presented as BFA Attachment A is the audited financial summary of Visiting Nurse Association of Long Island, Inc. for 2011 and 2010, which shows that the applicant has maintained positive working capital and net assets and generated average net operating revenue of (\$1,975,163). BFA Attachment B is the internal 2012 financial summary ending May 31, 2012. The applicant continues to maintain positive working capital, net assets and generated net operating revenue of (\$610,142). The applicant indicates that the primary reason for recent losses is due to declining referral volume. To increase referral volume, VNA of Long Island has become a preferred home care provider for Winthrop University Hospital, and has begun a clinical affiliation with Catholic Health Services of Long Island, as well as now working closely with St. Francis Hospital and Mercy Medical Center. VNA of Long Island indicates that they also continue to enhance their relationships with MLTCs.

Based on the proceeding, it appears that the applicant has demonstrated the financial 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      Financial Summary for Visiting Nursing Association of Long Island, Inc. ( 2011 and 2010)

BFA Attachment B      Financial Summary for Visiting Nursing Association of Long Island, Inc., April 30, 2012 (Internal)



# Public Health and Health Planning Council

Project # 121291-C  
**The Wartburg CHHA, Inc.**

**County: Westchester (New Rochelle)**  
**Purpose: Construction**

**Program: Certified Home Health Agency**  
**Submitted: April 20, 2012**

## Executive Summary

### Description

The Wartburg Home of the Evangelical Lutheran Church d/b/a The Wartburg Home is a not-for-profit corporation approved to operate as a long-term home health care program (LTHHCP) serving Westchester County. The Wartburg Home is requesting approval to expand the services of the LTHHCP by establishing a new certified home health agency (CHHA), The Wartburg CHHA, Inc., to serve Westchester and Bronx counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. The Wartburg Home of the Evangelical Lutheran Church submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

Need Summary  
The Wartburg CHHA, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary  
The Wartburg Home is currently in compliance with all applicable codes, rules and regulations.

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

|         |                     |                  |
|---------|---------------------|------------------|
| Budget: | <i>Revenues:</i>    | \$ 3,383,413     |
|         | <i>Expenses</i>     | <u>3,284,512</u> |
|         | <i>Gain/(Loss):</i> | \$ 98,901        |

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

## Recommendations

Health Systems Agency

There is no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of an executed building sublease that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

The Wartburg CHHA, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational

capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

## Programmatic Analysis

Background

The Wartburg Home of the Evangelical Lutheran Church dba The Wartburg Home is an existing not-for-profit corporation which operates an Article 28 residential health care facility and an Article 36 long term home health care program with approval to serve Westchester County.

The applicant proposes to establish a certified home health agency to serve Westchester and Bronx counties. The Wartburg Home proposes to serve the residents of these counties from their existing office located at 56 Harrison Street, New Rochelle, New York 10801.

The Wartburg Home proposes to offer the following health care services: home health aide, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy and speech language pathology.

The Wartburg Home is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

## Financial Analysis

Background

The Wartburg Home of the Evangelical Lutheran Church operates the following:

- a 240-bed residential health care facility (RHCF) in Mount Vernon;
- a medical model adult day care program for 80 registrants (ADCP) and also a social model adult day care program (ADCP);
- a long term home health care program (LTHHCP) for 299 registrants, which includes 100 non standard limited life slots in Westchester County; and
- a Licensed Home Care Service Agency (LHCSA).

The Wartburg Home of the Evangelical Lutheran Church's sole member is Wartburg-Mt. Vernon., which is also the sole member of The Wartburg Residential Community, Inc. and Wartburg Senior Housing Inc.

Total Project Cost and Financing

There are no project costs associated with this application.

Lease Rental Agreement

The applicant has submitted a letter of interest to sublease the proposed site, the terms of which are summarized below:

*Premises:* 1,091 gross square feet located at 56 Harrison Street – Suite 503, New Rochelle, NY  
*Landlord :* Hoffman Investors Corporation  
*Lessee/Sub-lessor:* The Wartburg Resident Community, Inc.  
*Sub-lessee:* The Wartburg Home of the Evangelical Lutheran Church  
*Term:* 5 years at \$20,000 per year (\$18.33 per sq ft) Renewal option one 5-year term  
*Provisions:* Taxes and Utilities

The applicant states that the lease is an arm’s length arrangement between the Landlord (Hoffman Investors Corp) and the Lessee/Sub-lessor (The Wartburg Residential Community Inc.), but it is a non-arm’s length arrangement between the (sub-lessor) and the sub-lessee.

Operating Budget

The applicant has submitted the first and third year incremental operating budgets, in 2012 dollars, as summarized below:

|                      | <u>First Year</u> | <u>Third Year</u> |
|----------------------|-------------------|-------------------|
| Revenues:            |                   |                   |
| Medicaid             | \$2,467,844       | \$2,869,943       |
| Medicare             | 354,304           | 402,601           |
| Commercial           | 89,153            | 110,869           |
| Total Revenues       | \$2,911,301       | \$3,383,413       |
| <br>                 |                   |                   |
| Total Expenses       | \$2,901,188       | \$3,284,512       |
| Net Income or (Loss) | \$10,113          | \$98,901          |

Utilization by payor source for the first & third year is anticipated as follows:

|                            |       |
|----------------------------|-------|
| Medicaid-Fee for Service   | 5.0%  |
| Medicaid-Managed Care      | 80.0% |
| Medicare-Managed Care      | 10.0% |
| Commercial-Fee-for Service | 1.5%  |
| Commercial-Managed Care    | 1.5%  |
| Charity Care               | 2.0%  |

Expense projections are based on the applicants’ experience in operating a LTHHCP along with analysis of the 2010 cost reports from CHHAs operating in the proposed service area. Utilization projections take into consideration service area projections and utilization experienced by other CHHAs serving Westchester and Bronx counties, as reported in their 2010 cost reports.

Medicaid average episodic payment is expected to be \$6,003.48 in the first year with a 1.085415 local wage index factor, and by the third year the applicant projects a slight decline to \$5,974.36, based on a 1.078702 local wage index factor. The budgeted is based upon the case mix of one.

The reason for the difference in the local wage factor between year 1 and 3 is due to the fact that the facility used a weighted average to determine the overall factor between the 2 counties. In year 1, 70% of the cases are budgeted to Westchester county, which has a local wage factor of 1.125693 (.70\*1.125693=.7879851) and the other 30% of the cases are budgeted to Bronx county with a local wage factor of .991433 (.30\*.991433=.2974299) which added together totals (.7879851 +.2974299=1.085415). In Year 3 the percentages for the cases budgeted to the counties changed. Westchester was budgeted 65% of the cases, and Bronx was budgeted 35% of the cases with the same

above noted local wage factors (.65\*1.125693=.73170045) and (.35\*.991433=.34700155), which added together totals (.73170045+.34700155=1.078702)

The projected payor mix is based on the experience of the applicant as a provider of home care services, a review of the proposed service area existing CHHAs' 2010 cost reports, as well as the projected impact of mandatory enrollment into Medicaid Managed Care.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$547,419, which appear reasonable based on two months of third year expenses. Presented as BFA Attachment A is The Wartburg Home of the Evangelical Lutheran Church 2010 and 2011 certified financial summary, which indicates the availability of sufficient resources for the project.

The budget projects an operating surplus of \$10,113 and \$98,901 in the first and third years, respectively. Revenues are based upon current methodology, the impact of mandatory enrollment into Medicaid Manage Care, and experience in providing home care services. The budget appears reasonable.

A review of BFA Attachment A, shows that The Wartburg Home of the Evangelical Lutheran Church had a 2011 operating loss of \$3,184,111, which was offset by a \$4,366,184 non-operating revenues. Working capital was \$8,816,727 at the end of 2011, an increase of \$1,388,078 from the previous year. For 2011 net assets totaled \$13,880,078, an increase of \$1,303,385 from 2010.

The applicant states that while Wartburg Home of the Evangelical Lutheran Church (WHELC) operates at a budgeted operating loss, they generate positive cash flow after adding back non-cash expenses, such as depreciation. They also point out that they have a 145-year history of receiving annual bequests, which go directly to help fund operations, and they also receive grants from the Wartburg Foundation, whose 2011 unrestricted assets totaled \$22,346,842 as seen on BFA Attachment B.

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

#### Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary for 2010 and 2011, The Wartburg Home of the Evangelical Lutheran Church |
| BFA Attachment B | Financial Summary for 2010 and 2011, The Wartburg Foundation, Inc.                        |



# Public Health and Health Planning Council

**Project # 121448-C**  
**UPR Care Corp., Inc.**  
**d/b/a Cold Spring Hills Center for Nursing and Rehabilitation**

**County: Nassau (Woodbury)**  
**Purpose: Construction**

**Program: Certified Home Health Agency**  
**Submitted: June 21, 2012**

## Executive Summary

### Description

Cold Spring Hills Center for Nursing and Rehabilitation, an existing long-term home health care program (LTHHCP) serving Nassau county, requests approval to convert to a new Article 36 certified home health agency (CHHA) to serve Nassau, Suffolk and Queens counties. Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing LTHHCP requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department of Health issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012. The DAL identified LTHHCPs that did not submit an application in response to the January 25, 2012 RFA as eligible to submit a CON application requesting approval as a general purpose CHHA. CON applications were initially due on June 15, 2012, but a June 11, 2012 clarification letter was issued extending the CON submission due date to June 22, 2012.

Cold Spring Hills Center for Nursing and Rehabilitation submitted an application in response to the DAL, and was awarded approval. This CON application is in response to the approval via the expedited review.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

### Need Summary

Cold Spring Hills Center for Nursing and Rehabilitation's application clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

### Program Summary

Cold Spring Hills Center for Nursing and Rehabilitation is currently in compliance with all applicable codes, rules and regulations.

### Financial Summary

There are no project costs associated with this proposal.

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 14,570,992     |
|                     | <i>Expenses:</i>    | <u>14,340,740</u> |
|                     | <i>Gain/(Loss):</i> | \$ 230,252        |

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



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. The applicant must submit a plan acceptable to the Department of Health that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]
2. Submission of a working capital loan commitment acceptable to the Department. [BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing Long Term Home Health Care Plan (LTHHCP) requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

### Solicitation

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012. The DAL identified LTHHCPs that did not submit an application in response to the January 25, 2012 RFA as eligible to submit a CON application requesting approval as a general purpose CHHA. CON applications were initially due on June 15, 2012, but a June 11, 2012 clarification letter was issued extended the CON submission due date to June 22, 2012.

### Review

Reviews were conducted and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's responses to CON Schedule 21. A June 11, 2012 clarification letter to the May 10, 2012 DAL letter informed potential applicants that the process to establish or expand existing CHHAs in NYS is based on the demonstration of need and or the ability of the organization to facilitate Medicaid Redesign Initiatives. The applicant was expected to address these criteria in their responses to the questions in CON Schedule 21.

From this review, applicants were recommended in each county proposed based on how well their proposal addressed the criteria in CON Schedule 21. Ultimately, three of thirteen applications were recommended for approval to establish a new general purpose CHHA in one or more of the eight Downstate counties.

Cold Spring Hills Center for Nursing and Rehabilitation's application clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on Section 709.1(a) of Title 10 NYCRR and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

### Recommendation

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

## Programmatic Analysis

Background

Cold Spring Hills Center for Nursing and Rehabilitation is an existing for-profit corporation that operates an Article 28 residential health care facility and an Article 36 long term home health care program (LTHHCP) with approval to provide services in Nassau County.

The applicant is requesting approval to establish a new Article 36 certified home health agency to serve the residents of Queens, Nassau and Suffolk counties.

The applicant proposes to provide the following home health services; home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy, speech language pathology, audiology.

Cold Spring Hills Center for Nursing and Rehabilitation is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

**Financial Analysis**

Operating Budget

The applicant has submitted the first and third year's incremental operating budgets, in 2012 dollars, as summarized below:

|                      | <u>First Year</u>  | <u>Third Year</u>   |
|----------------------|--------------------|---------------------|
| Revenues:            |                    |                     |
| Medicaid             | \$3,754,949        | \$10,599,299        |
| Medicare             | 1,290,428          | 3,895,733           |
| Private Pay          | <u>25,920</u>      | <u>75,960</u>       |
| Total Revenues       | \$5,071,297        | \$14,570,992        |
| <br>                 |                    |                     |
| Total Expenses       | <u>\$5,187,733</u> | <u>\$14,340,740</u> |
| Net Income or (Loss) | \$(116,436)        | \$230,252           |

Utilization by payor source for the first & third year is as follows:

|                            | <u>First Year</u> | <u>Third Year</u> |
|----------------------------|-------------------|-------------------|
| Medicaid – Fee for Service | 36.2%             | 14.5%             |
| Medicaid – Manage Care     | 36.2%             | 57.9%             |
| Medicare – Fee for Service | 20.7%             | 20.6%             |
| Medicare – Manage Care     | 3.3%              | 3.3%              |
| Private Pay                | 0.3%              | 0.4%              |
| Charity Care               | 3.3%              | 3.3%              |

Utilization and expense assumptions are based on evaluations by the applicant. They expect the patients will need approximately: 3 visits per month for Nursing; 2 visits per month for rehabilitation therapy (physical therapy, occupational therapy or speech pathology); 1 visit per month for social services; and 20 visits per month for home health aids.

The Medicare average episodic payment of \$3,314 is predicated on the calendar year 2012 national standardized 60-day episode payment rate of \$2,138.52, adjusted for case mix and wage index in the various counties to be serviced.

Medicaid average episode payment is expected to be \$5,913 after adjusting for the local wage index factor of 1.06436 and using a case mix factor of 1.

#### Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$2,390,123, of which half or \$1,195,061 will be borrowed from M&T Bank for 5 years with a floating interest rate predicated on market conditions. The balance in working capital of \$1,195,062 will be provided from Susan Ostreicher's personal resources, the president of Cold Spring Hills Center for Nursing and Rehabilitation. Presented as BFA Attachment B is Susan Ostreicher' net worth statement which indicates sufficient liquid resources to meet the working capital requirement.

The budget projects a first year operating loss of \$116,436 and a third year operating surplus of \$230,252. Revenues are based on current payment rates for CHHA. The submitted budget appears reasonable.

Presented as BFA Attachment A, certified financial summary for 2010 that shows UPR Care Corp., d/b/a Cold Spring Hills Center for Nursing and Rehabilitation had a negative working capital position and had a positive net asset position and a slight net loss of \$128,620. The applicant points that during 2010 they just completed a major construction project which impacted occupancy. Now that the construction is completed, management has taken steps to improve the occupancy and have brought in a new chief-executive officer and administrator who are increasing efficiency and reducing operating costs.

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

#### Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Financial Summary for 2010, UPR Care Corp., d/b/a Cold Spring Hills Center for Nursing and Rehabilitation. |
| BFA Attachment B | Net Worth Statement  |



# Public Health and Health Planning Council

## Project # 121424-C VillageCare Long Term Home Health Care Program

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

**Program:** Certified Home Health Agency  
**Submitted:** June 7, 2012

### Executive Summary

#### Description

VillageCare Long Term Home Health Care Program (LTHHCP), an existing LTHHCP serving Bronx, Kings and New York counties, requests approval to convert to a new Article 36 certified home health agency (CHHA) to serve Bronx, Kings, New York and Queens counties. Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing LTHHCP requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department of Health issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012. The DAL identified LTHHCPs that did not submit an application in response to the January 25, 2012 RFA as eligible to submit a CON application requesting approval as a general purpose CHHA. CON applications were initially due on June 15, 2012, but a June 11, 2012 clarification letter was issued extending the CON submission due date to June 22, 2012.

VillageCare LTHHCP submitted an application in response to the DAL, and was awarded approval. This CON application is in response to the approval via the expedited review.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

#### Need Summary

Village Center for Care, Inc.'s application clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

#### Program Summary

VillageCare Long Term Home Health Care Program is currently in compliance with all applicable codes, rules and regulations.

#### Financial Summary

There are no project costs associated with this application.

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 14,211,850     |
|                     | <i>Expenses:</i>    | <u>14,080,039</u> |
|                     | <i>Gain/(Loss):</i> | \$ 131,811        |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. The applicant must submit a plan acceptable to the Department of Health that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing Long Term Home Health Care Plan (LTHHCP) requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

### Solicitation

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012. The DAL identified LTHHCPs that did not submit an application in response to the January 25, 2012 RFA as eligible to submit a CON application requesting approval as a general purpose CHHA. CON applications were initially due on June 15, 2012, but a June 11, 2012 clarification letter was issued extended the CON submission due date to June 22, 2012.

### Review

Reviews were conducted and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's responses to CON Schedule 21. A June 11, 2012 clarification letter to the May 10, 2012 DAL letter informed potential applicants that the process to establish or expand existing CHHAs in NYS is based on the demonstration of need and or the ability of the organization to facilitate Medicaid Redesign Initiatives. The applicant was expected to address these criteria in their responses to the questions in CON Schedule 21.

From this review, applicants were recommended in each county proposed based on how well their proposal addressed the criteria in CON Schedule 21. Ultimately, three of thirteen applications were recommended for approval to establish a new general purpose CHHA in one or more of the eight Downstate counties.

Village Center for Care, Inc.'s application clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on Section 709.1(a) of Title 10 NYCRR and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

### Recommendation

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

## Programmatic Analysis

### Background

Village Center for Care, is an existing not-for-profit corporation that operates an Article 28 residential health care facility and an Article 36 long term home health care program (LTHHCP) with approval to provide services in Bronx, Kings and New York counties.

The applicant proposes to convert their LTHHCP, VillageCare Long Term Home Health Care Program, to an Article 36 certified home health agency to serve the residents of Bronx, Kings, New York and Queens counties.

The applicant proposes to provide the following home health services; home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy and speech language pathology.

VillageCare Long Term Home Health Care Program is currently in compliance with all applicable codes, rules and regulations.

### Recommendation

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

## Financial Analysis

### Operating Budget

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

|  | <u>Year One</u>         | <u>Year Three</u>       |
|--|-------------------------|-------------------------|
| Revenues:                                  |                         |                         |
| Commercial Fee for Service                 | \$1,055,950             | \$1,483,608             |
| Medicare Fee for Service Episodic          | 2,472,000               | 3,429,240               |
| Medicare Managed Care                      | 1,055,950               | 1,483,608               |
| Medicaid Fee for Service                   | 432,034                 | 150,724                 |
| Medicaid Episodic                          | 5,052,000               | 3,079,907               |
| Medicaid Managed care and MLTC             | 2,430,533               | 4,549,285               |
| Charity Care                               | (249,970)               | (283,528)               |
| Ryan White grant and prior year adjustment | <u>849,006</u>          | <u>319,006</u>          |
| Total Revenues:                            | 13,097,503              | 14,211,850              |
| <br>Expenses:                              | <br><u>\$13,067,132</u> | <br><u>\$14,080,039</u> |
| <br>Net Income:                            | <br><u>\$30,371</u>     | <br><u>\$131,811</u>    |

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

|                                   | <u>Year One</u> | <u>Year Three</u> |
|-----------------------------------|-----------------|-------------------|
| Commercial Fee for Service        | 9.56%           | 12.06%            |
| Medicare Fee for Service Episodic | 16.40%          | 19.73%            |
| Medicare Managed Care             | 9.56%           | 12.05%            |
| Medicaid Fee for Service          | 4.00%           | 1.24%             |
| Medicaid Episodic                 | 38.30%          | 19.67%            |
| Medicaid Managed Care             | 19.88%          | 33.05%            |
| Charity Care                      | 2.30%           | 2.20%             |



Expenses and utilization assumptions are based on the historical experience of the facility's sister CHHA. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment system.

### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$2,346,673 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachments A and B, are the 2010-2011 certified financial statements of Village Center for Care and Village Care of New York and Subsidiaries, respectively, which indicates the availability of sufficient funds for this project.

The submitted budget indicates a net income of \$30,371 and \$131,811 for the first and third years, respectively. Revenue is based on current payment rates for certified home health agencies and the Medicaid episodic payment rates. The budget appears reasonable.

As shown on BFA Attachment A, The 2010-2011 certified financial statements for Village Center for Care indicates that the facility has experienced an average negative working capital position and an average positive member's equity position for the period 2010-2011 and generated an average net operating loss of \$4,435,463 for the period 2010-2011 prior to non operating revenues and expenses. Including the non operating revenues and expenses gives the facility an average positive net income of \$7,420,731 for the period 2010-2011. The applicant indicates that the reason for the operating losses in 2011 was due to the implementation of MRT initiatives, especially the cap on home care for long term care patients, which caused a \$6 million dollar deficit for the special needs CHHA. The facility also incurred a loss due to the fact that it was the first year of operations of the new nursing home facility, VillageCare Rehabilitation and Nursing center. In order to rectify these issues the facility now has a managed long term care plan that is assuming responsibility for any Medicaid patients needing home care for over 120 days. Also the facility will open a general purposed CHHA, in which they can maintain operations within the Medicare and Medicaid episodic payments, which can be seen in the year 1 and 3 projections. As for the nursing home, the applicant indicates that the facility has negotiated a better Medicare managed care contract and also balanced the payor mix. With these adjustments, the facility is expecting to generate net operating revenue in 2012.

As shown on BFA Attachment B, the 2010-2011 certified financial statements for Village Care of New York and Subsidiaries indicates that the operations have a average negative working capital for the period 2010-2011, but in 2011 the facility has achieved positive working capital position of \$5.7 million which is over the amount that is necessary to furnish the working capital needs for this project. The operations also show a positive average net asset position for the period 2010-2011 and a negative average net loss of \$3,808,747. This is prior to non operating revenues and expenses which bring them to an average net income position for the period 2010-2011 of \$11,908,415. Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

### Recommendation

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

## Attachments

|                  |  |
|------------------|--|
| BFA Attachment A | Financial Summary Village Center for Care 2010- 2011 certified financial statements                  |
| BFA Attachment B | Financial Summary Village Care of New York and Subsidiaries 2010-2011 certified financial statements |
| BFA Attachment C | Organizational Chart   |
| BHFP Attachment  | Map  |



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

**August 9, 2012**

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**Book B**

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

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**Certified Home Health Agencies – Construction**

**Exhibit #19**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|--|---|
| 1. | 121203 C             | Personal Touch Home Aides of<br>New York Inc.<br>(Kings County)<br>Ms. Hines – Abstaining<br>Dr. Martin – Abstaining<br>Ms. Regan – Interest | Contingent Approval                       |



# Public Health and Health Planning Council

**Project # 121203-C**  
**Personal Touch Home Aides of New York, Inc.**

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

**Program: Certified Home Health Agency**  
**Submitted: April 12, 2012**

## Executive Summary

### Description

Personal Touch Home Aides of New York, Inc., an existing Article 36 proprietary corporation, located at 2701 Emmons Avenue in Brooklyn, currently operating a certified home health agency (CHHA) servicing Kings County, requests approval to expand its CHHA to provide services in Bronx, New York, Queens, Richmond, Nassau and Suffolk Counties. The applicant will lease additional office space in West Hempstead and Bronx.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHAs. Personal Touch Aides of New York, Inc. submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

Need Summary  
Personal Touch Home Aides of NY, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary  
Personal Touch Home Aides of New York, Inc. is currently in compliance with all applicable codes, rules and regulations.

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

|                     |                   |                  |
|---------------------|-------------------|------------------|
| Incremental Budget: | <i>Revenues:</i>  | \$ 6,272,578     |
|                     | <i>Expenses:</i>  | <u>5,902,592</u> |
|                     | <i>Gain/Loss:</i> | \$ 369,986       |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of executed building leases acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Personal Touch Home Aides of NY, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

## Programmatic Analysis

Background

Personal Touch Home Aides of New York, Inc. is an existing proprietary corporation which operates a certified home health agency with approval to serve Kings County.

The applicant proposes to expand the service area of the existing CHHA into Bronx, New York, Queens, Richmond, Nassau and Suffolk counties. Personal Touch Home Aides of New York, Inc. proposes to serve the residents of these counties from their existing office located at 2701 Emmons Avenue, Brooklyn, NY 11235 and proposes to open a new branch offices which will be located at 509 Willis Avenue, Bronx, New York 10455 and 60 Hempstead Avenue, West Hempstead, NY 11552..

Personal Touch proposes to offer the following health care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, occupational therapy, physical therapy and speech language pathology.

Personal Touch Home Aides of New York, Inc. is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

## Financial Analysis

Lease Agreements

The applicant has submitted proposed lease agreements, the terms of which are summarized below:

*Landlord:* Personal Touch Home Care of LI, Inc.  
*Tenant:* Personal Touch Homes Aides of New York, Inc.  
*Premises:* Approximately 1,000 sq. ft. located at 60 Hempstead Ave., West Hempstead  
*Rental:* \$20,000/year (\$20/sq. ft.)  
*Term:* 5 year term with the option to renew for an additional 5 years.  
*Provisions:* Tenant is responsible for maintenance and utilities

*Landlord:* Personal Home Care of NY, Inc.  
*Tenant:* Personal Touch Home Aides of New York, Inc.  
*Premises:* Approximately 1,000 sq. ft. located at 509 Willis Ave., Bronx.

*Rental:* \$20,000/year (\$20/sq. ft.)  
*Term:* 5 year term with the option to renew for an additional 5 years  
*Provisions:* Tenant is responsible for maintenance and utilities.

The applicant has indicated that the leases will be non-arm's length lease agreements, and letters of opinion from Licenses Commercial Real Estate Brokers have been submitted indicating rent reasonableness.

#### Operating Budget

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

|                | <u>Year One</u>    | <u>Year Three</u>  |
|----------------|--------------------|--------------------|
| Revenues:      |                    |                    |
| Medicaid       | \$1,889,040        | \$4,662,013        |
| Medicare       | 514,443            | 1,406,146          |
| Commercial     | <u>74,788</u>      | <u>204,419</u>     |
| Total Revenue: | \$2,478,271        | \$6,272,578        |
| Expenses:      | <u>\$2,323,457</u> | <u>\$5,902,592</u> |
| Net Income:    | \$154,814          | \$369,986          |

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

|                          | <u>Years One and Three</u> |
|--------------------------|----------------------------|
| Commercial Managed Care  | 2%                         |
| Medicare Fee for Service | 15%                        |
| Medicaid Managed Care    | 81%                        |
| Charity Care             | 2%                         |

Expenses and utilization assumptions are based on existing CHHA Program's historical experience.

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 and year three for a conservative approach.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$983,765 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment A, is the financial summary of Personal Touch Home aides of New York, Inc., which indicates the availability of sufficient funds.

The submitted budget indicates a net income of \$154,814 and \$369,986 for the first and third years, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. DOH staff has sensitized the budgets to reflect the effect of the EPS payments. Presented as BFA Attachment B is the sensitivity analysis. The budget appears reasonable.

As shown on BFA Attachment A, a financial summary of Personal Touch Home Aides of New York, Inc. indicates that the facility has experienced negative working capital and negative stockholder's equity and generated an operating income of \$30,523,000 and \$18,969,000 for 2010 and 2011, respectively. As shown on BFA Attachment B, a financial summary of Personal Touch Home Aides of New York, Inc. as of March 31, 2012 indicates that the facility has experienced negative working capital and negative stockholder's equity and generated a net income of \$3,053,000.



The applicant has indicated the reason for the negative working capital is due to an increase in Due to Third Party Payer. The liability is recorded as current, although it is a long term liability, because of GAAP requirements. The negative stockholder's equity is due to the applicant establishing an Employee Stock Ownership Plan (ESOP) in December 2010. The unearned ESOP shares are included as a reduction of stockholder's equity as required by GAAP.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary, Personal Touch Home Aides of New York, Inc.                      |
| BFA Attachment B | Financial Summary as of March 31, 2012, Personal Touch Home Aides of New York, Inc. |
| BFA Attachment C | Sensitivity Analysis for Episodic Payment System                                    |

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

**August 9, 2012**

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**Book B**

**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**

**Certified Home Health Agencies – Establishment**

**Exhibit #20**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>   | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|--|---|
| 1. | 121309 E             | Center Light Certified Home Health Care Agency<br>(Kings County)<br>Mr. Fassler – Recusal<br>Ms. Regan – Interest            | Contingent Approval                       |
| 2. | 121256 E             | Isabella Care at Home, Inc.<br>(New York County)<br>Dr. Berliner – Recusal<br>Mr. Fassler – Interest<br>Ms. Regan – Interest | Contingent Approval                       |
| 3. | 121252 E             | Jewish Home Lifecare,<br>Community Services<br>(New York County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest           | Contingent Approval                       |
| 4. | 121222 E             | Lutheran CHHA, Inc.<br>(Kings County)<br>Ms. Regan – Interest  | Contingent Approval                       |

- |    |          |   |                     |
|----|----------|---|---------------------|
| 5. | 121247 E | Queens Long Island Certified Home Health Agency, LLC<br>(Queens County)<br>Ms. Regan – Interest | Contingent Approval |
| 6. | 121446 E | South Nassau Communities Hospital<br>(Nassau County)<br>Ms. Regan – Interest                    | Contingent Approval |



# Public Health and Health Planning Council

## Project # 121309-E CenterLight Certified Home Health Agency

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

**Program:** Certified Home Health Agency  
**Submitted:** April 20, 2012

### Executive Summary

#### Description

CenterLight Health System (CenterLight) requests approval to establish CenterLight Certified Home Health Agency (CHHA) to operate in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk and Westchester Counties. CenterLight, formerly known as Beth Abraham Family of Health Services, is an existing not-for-profit non-sectarian provider, presently operating four nursing facilities, a myriad of community-based programs, a licensed home care services agency and senior housing. The administrative office will be located at 596 Prospect Place, Brooklyn

The applicant also requested approval to serve the following upstate county of Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. CenterLight CHHA submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

#### DOH Recommendation

Disapproval as proposed. Contingent approval as amended by the Department, to serve Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester counties.

#### Need Summary

Centerlight CHHA's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

#### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

#### Financial Summary

There are no project costs associated with this application.

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 22,162,481     |
|                     | <i>Expenses:</i>    | <u>21,785,617</u> |
|                     | <i>Gain/(Loss):</i> | \$ 376,864        |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion acceptable to the Department of Health. [BFA]
2. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]
3. Submission of a photocopy of the signed and dated Certificate of Incorporation of Centerlight Certified Home Health Agency, acceptable to the Department. [CSL]
4. Submission of evidence of adoption of the bylaws of Centerlight Certified Home Health Agency, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Centerlight Certified Home Health Agency's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the

organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

The applicant also requested approval to serve the following upstate county: Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate county.

Recommendation

**From a need perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

## Programmatic Analysis

### Background

CenterLight Certified Home Health Agency is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the downstate counties of Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester, and the upstate county of Rockland. The sole member corporation of the proposed CenterLight Certified Home Health Agency is CenterLight Health System, Inc., an existing not-for-profit corporation. CenterLight Health System, Inc., is also the member corporation of:

- Center for Nursing and Rehabilitation, Inc. (RHCF and LTHHCP),
- Beth Abraham Health Services (RHCF and LTHHCP),
- Margaret Tietz Nursing and Rehabilitation Center (RHCF), which was the member corporation of MTC Senior Housing, Inc. (now closed),
- Schnurmacher Center for Nursing and Rehabilitation (RHCF),
- Best Choice Home Health Care, Inc. (LHCSA), and
- CenterLight Healthcare (MLTCP, PACE, and an approved but not yet operational Medicaid Advantage Plus Plan), which is the member corporation of Comprehensive Care Management, Inc. (CCM) Diagnostic and Treatment Center (D&TC - 11 locations).

CenterLight Health System, Inc. is also a member of the following:

- Institute for Music and Neurological Function (providing stroke/neurological treatment therapies),
- CNR Health Care Network, Inc. (now closed), which was the member corporation of Prospect Home Care, Inc. (LHCSA) and Prospect Home Attendant Services, Inc., which both closed in 2009,
- CNR Housing Development Fund,
- MVP Housing (HUD senior independent living),
- Park Housing (HUD senior independent living),
- Beth Abraham Housing (HUD senior independent living),
- TBM Housing (HUD senior independent living), and
- Beth Abraham/CNR Foundation, Inc.

The applicant proposes to operate the CHHA from an office located at 596 Prospect Place, Brooklyn, New York 11230. The applicant proposes to provide the following health care services:

|   |                      |                         |
|---|----------------------|-------------------------|
| Nursing                                     | Home Health Aide     | Personal Care           |
| Physical Therapy                            | Occupational Therapy | Respiratory Therapy     |
| Speech Language Pathology                   | Audiology            | Medical Social Services |
| Nutrition                                   | Homemaker            | Housekeeper             |
| Medical Supplies, Equipment, and Appliances |                      |                         |

The Board of Directors of CenterLight Certified Home Health Agency will be as follows:

**Michael R. Potack**, Chairperson  
 CEO, Unitex Holdings (laundry services)  
Affiliations: Beth Abraham Health Services  
 (1991 – present)

**Michael S. Fassler, LNHA** (NYS and NJ)  
 President/CEO, CenterLight CHHA, CenterLight Health  
 System, Inc.

**Stephen B. Mann, CPA**, Secretary/  
 Treasurer  
 Senior VP of Finance Administration,  
 CenterLight Health System, Inc.  
Affiliations: Best Choice Home Health Care,  
 (2000 – present), Beth Abraham Health  
 Services, (2000 – present), CenterLight  
 Healthcare MLTCP (2000 – present),  
 Comprehensive Care Management  
 D & T Center (2000 – present)

The Board of Directors of CenterLight Health System, Inc., are as follows:

**Michael R. Potack**, Chairman  
 (disclosed above)

**Jerald I. Moskowitz**, Vice Chairman  
 Retired

**Edwin H. Stern, III**, Secretary  
 Executive VP, Seiden Krieger Associates  
 (executive search consultants)  
Affiliations: Montefiore Medical Center  
 (1968 – present),  
 Beth Abraham Health Services  
 (1969 – present)

**Michael S. Fassler, LNHA**, President/CEO  
 (disclosed above)

**Vitina A. Biondo, Esq.**  
 Unemployed  
Affiliation: Schnurmacher 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  
 (1997 - present)

**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

**Thomas R. Berkel**  
Retired

A search of the individuals named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List.

The Office of the Professions of the NYS Education Department indicates no issues with the CPA and DDS licenses associated with this application. The NYS Education Department also verifies the teaching certificates associated with this application. The NYS Unified Court System verifies the active attorney registrations associated with this application. The New Jersey Department of Health verifies the New Jersey nursing home administrator license associated with this application. The NYSDOH Bureau of Professional Credentialing has indicated that Michael S. Fassler holds a NYS 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.

A ten year review of the following facilities was performed as part of this review:

Center for Nursing and Rehabilitation, Inc. (RHCF and LTHHCP),  
Beth Abraham Health Services (RHCF and LTHHCP),  
Margaret Tietz Nursing and Rehabilitation Center (RHCF),  
Schnurmacher Center for Nursing and Rehabilitation (RHCF),  
Best Choice Home Health Care, Inc. (LHCSA),  
CenterLight Healthcare (MLTCP and PACE),  
Comprehensive Care Management Diagnostic and Treatment Center (D&TC - 11 locations),  
Montefiore Medical Center (Hospital),  
Prospect Home Care, Inc. (LHCSA), closed 2009

The Division of Residential Services has indicated the following:

Beth Abraham Health Services RHCF had a civil penalty of \$30,000 imposed pursuant to a stipulation and order dated June 2, 2010 for surveillance findings of April 27, 2009. Violations were cited in 10 NYCRR 415.12 Quality of Care, 415.20 Laboratory and Blood Bank, and 415.26 Organization and Administration.

Center for Nursing & Rehabilitation RHCF had a civil penalty of \$24,000 imposed pursuant to a stipulation and order dated August 22, 2011 for surveillance findings of January 29, 2010. Violations were cited in 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 Division of Residential Services 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 had a civil penalty of \$14,000 imposed in 2007 for failure to report suspected child abuse to the proper authorities. Montefiore Medical Center also had a civil penalty of \$18,000 imposed in 2003 for violations of the Resident Working Hours regulation. Montefiore Dialysis Center had a civil penalty of \$52,000 imposed in 2005 based on conditions of participation, resulting in the closure of two dialysis center sites.

The information provided by the Division of Certification and Surveillance has indicated that the hospital and D & T Center 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 agencies and long term home health care programs have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Managed Care has indicated that the MLTC plan and PACE program have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

The applicant has also requested approval to serve the following upstate counties: Rockland County. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve that upstate county will be presented to the Council at a future meeting. Therefore, this application has been amended by the Department to remove the request for that upstate county at this time.

Recommendation

**From a programmatic perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

## Financial Analysis

### Operating Budget

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

|                          | <u>Year One</u>     | <u>Year Three</u>   |
|--------------------------|---------------------|---------------------|
| Revenues:                |                     |                     |
| Medicaid Fee-for-Service | \$4,101,710         | \$3,304,954         |
| Medicaid Managed Care    | 3,941,321           | 12,698,809          |
| Medicare Fee-for-Service | 2,580,914           | 5,413,518           |
| Medicare Managed Care    | 302,110             | 602,400             |
| Private Pay              | <u>71,400</u>       | <u>142,800</u>      |
| Total Revenues           | \$10,997,455        | \$22,162,481        |
| Expenses                 | <u>\$10,786,779</u> | <u>\$21,785,617</u> |
| Net Gain(Loss)           | \$210,676           | \$376,864           |

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

|                          | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Medicare Fee-For-service | 15.12%          | 15.14%            |
| Medicare Managed care    | 2.44%           | 2.42%             |
| Medicaid Fee-For-Service | 39.73%          | 15.91%            |
| Medicaid Managed Care    | 39.75%          | 63.58%            |
| Private Pay              | .47%            | .47%              |
| Charity Care             | 2.49%           | 2.48%             |

Expense assumptions are commensurate with the projected utilization (visits and hours) and are based on current salaries in the area for CHHA services. Utilization assumptions are based on the applicant's review of the current regional utilization for CHHA services. Revenues are reflective of current payment rates as well as recent implementation of the Medicaid Episodic Payment System.

**Capability and Feasibility**

There are no project costs associated with this application.

Working capital requirements, estimated at \$3,630,936, appear reasonable based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment D, Centerlight's CHHA pro-forma balance sheet shows a net asset position of \$3,930,936 as of the first day of operations.

The submitted budget indicates that the applicant will achieve incremental net revenue of \$210,676 and \$376,864 in the first and third years of operations, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. The budget appears reasonable.

Presented as BFA Attachment A is the 2009-2010 audited financial summary of Bethco Corporation and Subsidiaries, which is the parent company for CenterLight Health System, Inc, which became CenterLight Health Systems, Inc. in 2012, shows the applicant has maintained positive working capital and net asset positions and achieved an average net income of \$14,981,241.

BFA Attachment B is the internal 2011 financial summary for Bethco Corporation and Affiliates, which shows that the applicant continues to maintain positive working capital and net assets positions and generated a net loss of \$7,432,242. The applicant indicates that the 2011 loss is due to CenterLight Healthcare, Inc. increasing staffing and systems, in order to prepare for the anticipated growth based on the goals of the Medicaid redesign team.

BFA Attachment C is the Internal 2012 financial statement for Centerlight Health Systems, Inc. for the first 3 months of operation, which shows that the operations maintain positive working capital and net asset positions and has a net operating loss of \$4,663,749 prior to non operating income of \$5,495,883, which allowed the facility to achieve overall positive income of \$832,134.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner, and contingent approval is recommended.

**Recommendation**

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

|                    |
|--------------------|
| <b>Attachments</b> |
|--------------------|

BFA Attachment A    Certified Financial Summary for Bethco Corporation and Subsidiaries (2009 and 2010)

BFA Attachment B    Internal Financial Summary for Bethco Corporation and Affiliates 2011

BFA Attachment C Internal Financial Summary for Centerlight Health Systems, Inc January 1-  
March 31, 2012

BFA Attachment D Pro-forma Balance Sheet Centerlight Health System (CHHA)

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 CenterLight Certified Home Health Agency to operate in, Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk and Westchester Counties 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

121309 E

CenterLight Certified Home Health Agency

APPROVAL CONTINGENT UPON:

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion acceptable to the Department of Health. [BFA]
2. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]
3. Submission of a photocopy of the signed and dated Certificate of Incorporation of Centerlight Certified Home Health Agency, acceptable to the Department. [CSL]
4. Submission of evidence of adoption of the bylaws of Centerlight Certified Home Health Agency, acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299



# Public Health and Health Planning Council

Project # 121256-E  
**Isabella Care at Home, Inc.**

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

**Program: Certified Home Health Agency**  
**Submitted: April 19, 2012**

## Executive Summary

### Description

Isabella Care at Home, Inc., a proposed Article 36 not-for-profit corporation, requests approval to establish a certified home health agency (CHHA) in the counties of New York, Bronx, Queens, Kings, and Westchester. Isabella Home, is a not-for-profit corporation, which serves as the passive parent and sole member of the applicant is Isabella Home, which is also the sole member corporation of Isabella Geriatric Center RHC and LTHHCP, and Isabella Visiting Care, Inc. LHCSA, a not-for-profit corporation that operates the following: a 707-bed residential health care facility, including 2 respite beds; an 81-unit apartment residence for the well-elderly; a 900-slot long term home health care program in Manhattan and the Bronx; a case management contract with the City of New York to service up to 1200 clients; and an adult day care program.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Isabella Care at Home, Inc. submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

Need Summary  
Isabella Geriatric Center, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary  
A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

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

|         |                     |                   |
|---------|---------------------|-------------------|
| Budget: | <i>Revenues:</i>    | \$ 17,426,582     |
|         | <i>Expenses:</i>    | <u>17,134,420</u> |
|         | <i>Gain/(Loss):</i> | \$ 292,162        |

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

## 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 working capital loan commitment that is acceptable to the Department of Health. [BFA]
2. Submission of an executed building sublease that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Council Action Date

**August 9, 2012.**



## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Isabella Geriatric Center, Inc.'s proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational

capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

## Programmatic Analysis

### Background

Isabella Care at Home, Inc., is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the downstate counties of Bronx, Kings, New York, Queens, and Westchester. The sole member corporation of the proposed Isabella Care at Home, Inc. is Isabella Home, an existing not-for-profit corporation. Isabella Home is also the member corporation of:

Isabella Geriatric Center, Inc. (RHCF and LTHHCP)  
Isabella Visiting Care, Inc. (LHCSA)

In addition, Isabella Home is also the member corporation of:

Isabella Child Day Care Services, Inc.,  
Isabella Management Services, Inc., and  
Isabella Foundation, Inc.

The applicant proposes to operate the CHHA from an office located at 5073 Broadway, New York, New York 10034. 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 | Homemaker                                   | Medical Social Services |
| Housekeeper               | Medical Supplies, Equipment, and Appliances |                         |
| Nutrition                 |   |                         |

The members of the Board of Directors of Isabella Care at Home, Inc. will be as follows:

**Mark Lipton, PhD**, Chairperson  
Owner, Mark Lipton, PhD, Consulting Firm  
Professor, Milano School of International  
Affairs, Management, and Urban Policy

**Mark J. Kator, LNHA** (ex officio board director)  
President/CEO, Isabella Home and Affiliates,  
Isabella Care at Home, Inc.

**Arthur J. Lennon, MD**, 1<sup>st</sup> Vice Chairperson  
Retired

**Howard S. Berliner, ScD**, 2<sup>nd</sup> Vice Chairperson  
Director of Health Policy, Service Employees  
International Union

**Alexander S. Balko, CPA**, Treasurer  
Senior VP/CFO, Metropolitan Jewish Health  
System, Inc.

**Ann Wyatt, MSW, LNHA**, Secretary  
Self Employed Health Care Consultant

Affiliations: First to Care Home Care, Inc.

CHHA (2000 – present), Menorah Home and Hospital RHCF (2007 – present), OLOM Home Care, Inc. CHHA (2009 - present)

The members of the Board of Directors of Isabella Home are as follows:

**Mark Lipton, PhD**, Chairperson  
Disclosed above

**Mark J. Kator, LNHA** (ex officio board director)  
Disclosed above

**Arthur J. Lennon, MD**, 1<sup>st</sup> Vice Chairperson  
Disclosed above

**Howard S. Berliner, ScD**, 2<sup>nd</sup> Vice Chairperson  
Disclosed above

**Alexander S. Balko**, CPA, Treasurer  
Disclosed above

**Ann Wyatt, MSW, LNHA**, Secretary  
Disclosed above

**Richard B. Harding, Jr.**  
VP of Operations, Sciam Development, Inc. (Construction)

**Msgr. Gerald T. Walsh**  
Seminarian Preparer, St. Joseph's Seminary  
Affiliation: St. Patrick's Home RHCF  
(1998 – present)

**Msgr. Charles J. Fahey**  
Retired  
Program Officer/Consultant,  
Milbank Memorial Fund (Grants Organization)  
Affiliations: Catholic Health Care System, d/b/a ArchCare (2005 – present)

**Josephine F. McFadden, LPN**  
Retired

**Edward J. McFadden, LNHA**  
Retired

**Seiichi Shimomura, MD**  
Retired

**Caroline M. Jacobs**  
Senior VP for Safety and Human Development, NYC Health and Hospitals Corporation

**Rafael Lantigua, MD**  
Professor of Clinical Medicine, Columbia University College of Physicians and Surgeons, and Supervisor of Psychiatry Fellows, Binghamton Psychiatric Center

**Hila Richardson, RN, DrPH**  
Clinical Professor, New York University College of Nursing

**John Green**  
Professor / Associate Dean, Milano School of International Affairs, Management, and Urban Policy

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A search of the individuals named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List.

The Office of the Professions of the NYS Education Department, the NYSDOH Physician Profile, and the NYSDOH Office of Professional Medical Conduct all indicate no issues with the professional health care licenses, and other professional licenses, associated with this application. The NYSDOH Bureau of Professional Credentialing has indicated that the active nursing home administrator licenses associated with this application are in good standing with no history of disciplinary action by the Board of Examiners of Nursing Home Administrators.

A ten year review of the following facilities was performed as part of this review:

- Isabella Geriatric Center, Inc. (RHCF and LTHHCP),
- Isabella Visiting Care, Inc. (LHCSA),
- St. Patrick's Home (RHCF),
- Menorah Home and Hospital (RHCF),
- OLOM Home Care, Inc. (CHHA),
- First to Care Home Care, Inc. (CHHA),
- Catholic Health Care System, d/b/a ArchCare (2005 – present), as member corporation for the following providers:
  - Calvary Hospital (Hospital),
  - Calvary Hospital CHHA (CHHA),
  - Calvary Hospital Hospice Care (Hospice),
  - Carmel Richmond Healthcare and Rehabilitation Center (RHCF),
  - Ferncliff Nursing Home (RHCF),
  - Kateri Residence (RHCF),
  - Mary Manning Walsh Nursing Home (RHCF),
  - St. Vincent DePaul Residence (RHCF),
  - St. Teresa's Nursing and Rehabilitation Center (RHCF),
  - Terence Cardinal Cooke Health Care Center (RHCF), and
  - ArchCare Senior Life (PACE Program and proposed MLTC Plan)

The Division of Residential Services has indicated the following:

St. Patrick's Home RHCF had a civil penalty of \$2,000 imposed pursuant to a stipulation and order dated July 26, 2005 for surveillance findings of September 10, 2004. Violations were cited in 10 NYCRR 415.29(f)(6) Physical Environment: Water Supplies, and 415.26 Organization and Administration.

Kateri Residence RHCF had a civil penalty of \$4,000 imposed pursuant to a stipulation and order dated March 8, 2009 for surveillance findings of March 28, 2008. Violations were cited in 10 NYCRR 415.12 Quality of Care, and 415.12(h)(1) and (2) Quality of Care: Accidents.

Terence Cardinal Cooke Health Care Center RHCF had a civil penalty of \$2,000 imposed pursuant to a stipulation and order dated September 26, 2011 for surveillance findings of April 9, 2010. Violations were cited in 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

Terence Cardinal Cooke Health Care Center RHCF also had a civil penalty of \$6,000 imposed pursuant to a stipulation and order dated February 3, 2009 for surveillance findings of March 19, 2008. Violations were cited in 10 NYCRR 415.12(h)(2) Quality of Care: Accidents, 415.26 Organization and Administration, and 415.26(b)(3) Organization and Administration: Governing Body.

Terence Cardinal Cooke Health Care Center RHCF also had a civil penalty of \$3,000 imposed pursuant to a stipulation and order dated August 1, 2007 for surveillance findings of February 21, 2007. Violations were cited in 10 NYCRR 415.12(h)(2) Quality of Care: Accidents, and 415.26 Organization and Administration.

Terence Cardinal Cooke Health Care Center RHCF also had a civil penalty of \$4,000 imposed pursuant to a stipulation and order dated September 29, 2005 for surveillance findings of April 20, 2005. Violations were cited in 10 NYCRR 415.11(c)(1) Resident Assessment and Care Planning: Comprehensive Care Plans, 415.12(h)(2) Quality of Care: Accidents, 415.26(b)(2) Organization and Administration: Governing Body, and 415.26(d) Organization and Administration: Nurse Aide Certification and Training.

The information provided by the Division of Residential Services has indicated that the nursing homes reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospital Certification and Surveillance has indicated that the associated hospital has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the associated certified home health agencies, hospice, licensed home care services agency, and long term home health care program have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Managed Care has indicated that the PACE program has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. 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

Total Project Cost and Financing

There are no project costs associated with this application.

Lease Rental Agreement

The applicant has submitted a draft sublease rental agreement for the proposed site, the term of which is summarized below:

*Date:* May 3, 2012  
*Premises:* 5,000 gross sq. ft. located at 5073 Broadway in the Borough of Manhattan  
*Landlord :* 5073 Broadway Real Estate Holding Corp.  
*Lessee:* Isabella Geriatric Center, Inc.  
*Sub-lessee:* Isabella Care at Home, Inc.  
*Term:* Rental period ends on October 31, 2021  
 Rent 8/1/12 – 7/31/15 (\$15,188.75 per month or \$36.45 per sq. ft.)  
 Rent 8/1/15 – 7/31/18 (\$15,948.19 per month or \$38.28 per sq. ft.)  
 Rent 8/1/18 – 10/31/21 (\$16,745.60 per month or \$40.19 per sq. ft.)  
*Provisions:* Taxes and Utilities

The applicant states that the lease is an arm’s length arrangement between the Landlord (5073 Broadway Real Estate Holdings Corp) and the Sub-lessor (Isabella Geriatric Center Inc.), but it is non-arm’s length arrangement between the (sub-lessor) and the sub-lessee. Realtor letters have been provided attesting to the rental rate being of fair market value.

Operating Budget

The applicant has submitted the first and third year’s incremental operating budgets, in 2012 dollars, as summarized below:

|                      | <u>First Year</u>  | <u>Third Year</u>   |
|----------------------|--------------------|---------------------|
| Revenues:            |                    |                     |
| Medicaid             | \$4,756,168        | \$12,573,174        |
| Medicare             | 1,719,161          | 4,772,408           |
| Private Pay          | 30,190             | 81,000              |
| Total Revenues       | \$6,505,519        | \$17,426,582        |
| <br>                 |                    |                     |
| Total Expenses       | <u>\$6,663,093</u> | <u>\$17,134,420</u> |
| Net Income or (Loss) | \$(157,574)        | \$292,162           |

Utilization by payor source for the first & third year is as follows:

|                            | <u>First Year</u> | <u>Third Year</u> |
|----------------------------|-------------------|-------------------|
| Medicaid – Fee-for-Service | 36.2%             | 14.5%             |
| Medicaid – Manage Care     | 36.2%             | 57.9%             |
| Medicare – Fee-for-Service | 20.7%             | 20.7%             |
| Medicare – Manage Care     | 3.3%              | 3.3%              |
| Private Pay                | 0.3%              | 0.3%              |
| Charity Care               | 3.3%              | 3.3%              |

Utilization and expense assumptions are based on evaluations by the applicant. They expect the patients will need approximately 3 visits per month for Nursing, 2 visits per month for rehabilitation therapy (physical therapy, occupational therapy or speech pathology), 1 visit per month for social services, and 20 visits per month for home health aids.

The Medicare average episodic payment of \$3,395 is predicated on the calendar year 2012 national standardized 60-day episode payment rate of \$2,138.52, adjusted for case mix and wage index in the various counties to be serviced. Medicaid average episode payment is expected to be \$5,618 after adjusting for New York County’s wage factor of .996524 and using a case mix factor of 1.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$2,855,737, of which \$1,427,850 will be borrowed from the Bank of America, repayment will be made over five years at an estimated interest rate of 6%. Isabella Geriatric Center Inc. will provide the balance of \$1,427,887. BFA Attachment A demonstrates Isabella Geriatric Center has the ability to provide the financial support for this project. Presented as BFA Attachment B is the pro-forma balance sheet that shows operations will start off with \$1,427,887 in net assets.

The budget projects a first year operating loss of \$157,574 and a third year operating surplus of \$292,162. Revenues are based on current payment rates for CHHA. The submitted budget appears reasonable.

A review of BFA Attachment A shows Isabella Geriatric Center, Inc. (IGC) had an overall deficit in 2011 of \$1,911,284, which was an improvement from the previous year. The applicant says that 2011 would have been at a relative break-even level if they didn’t incur a negative retroactive rebasing of \$1,000,000, and an adjustment to workers compensation for \$1,000,000. Also, the applicant goes on to state that during 2011, operating results were helped by an increase in the census for the Long-term Home Health Care Program (LTHHCP) and Adult Day Care Program (ADCP) along with containment of operating expenses. IGC implemented further cost cutting measures in the 4<sup>th</sup> quarter of 2011 that are continuing into 2012, with an expected annualized savings of approximately \$4,000,000. The majority of these savings are coming from reductions in workforce staffing levels, coming through lay-offs and attrition.

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

Recommendation

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

|                      |
|----------------------|
| <h2>Attachments</h2> |
|----------------------|

- |                  |  |
|------------------|--|
| BFA Attachment A | Draft Financial Summary for 2010 and 2011, Isabella Geriatric Center, Inc. |
| BFA Attachment B | Pro-forma Balance Sheet, Isabella Care at Home, Inc.                       |
| BFA Attachment C | Organizational Chart   |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 a certified home health agency (CHHA) in the counties of New York, Bronx, Queens, Kings, and Westchester., 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

121256 E

Isabella Care at Home, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
2. Submission of an executed building sublease that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONED UPON:

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299





# Public Health and Health Planning Council

## Project # 121252-E Jewish Home Lifecare, Community Services

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

**Program:** Certified Home Health Agency  
**Submitted:** April 18, 2012

### Executive Summary

#### Description

Jewish Home Lifecare, Community Services, a recently-formed not-for-profit corporation, requests approval to establish a certified home health agency (CHHA) to serve Kings, Queens, Richmond, Bronx, New York, Westchester, Rockland, Nassau and Suffolk Counties. The applicant is a member of the Jewish Home Lifecare System, which includes three nursing homes and two LTHHCPs (Jewish Home Lifecare, Manhattan RHCF, and LTHHCP, Jewish Home Lifecare, Harry and Jeanette Weinburg Campus, Bronx RHCF, and LTHHCP, Jewish Home Lifecare, Sarah Newman Center RHCF, and several not-for-profit and for-profit organizations providing resident care, residential and related services, including fundraising.

The applicant also requested approval to serve the following upstate county: Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate county.

On December 8, 2011, the PHHPC adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Jewish Home Lifecare, Community Service submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

#### DOH Recommendation

Disapproval as proposed. Contingent approval as amended by the Department, to serve Kings, Queens, Richmond, Bronx, New York, Westchester, Nassau and Suffolk counties.

#### Need Summary

Jewish Home Lifecare, Community Services' proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

#### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the PHL.

#### Financial Summary

There are no project costs associated with this application.

|         |                     |               |
|---------|---------------------|---------------|
| Budget: | <i>Revenues:</i>    | \$ 15,761,046 |
|         | <i>Expenses:</i>    | 15,441,497    |
|         | <i>Gain/(Loss):</i> | \$ 319,549    |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion that are acceptable to the Department of Health. [BFA]
2. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]
3. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Council Action Date

**August 9, 2012.**



## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Jewish Home Lifecare, Community Services' proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the

organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

The applicant also requested approval to serve the following upstate county: Rockland. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve the upstate counties will be presented to the council at a future meeting. Therefore, this application has been amended by the Department to remove the request for the upstate county

Recommendation

**From a need perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

## Programmatic Analysis

### Background

Jewish Home Lifecare, Community Services is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the downstate counties of Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk and Westchester and the upstate county of Rockland.

The applicant proposes to operate the CHHA from an office located at 104 West 29th Street, New York, New York 10021. The applicant proposes to provide the following health care services:

|                           |   |
|---------------------------|---|
| Nursing                   | Home Health Aide                            |
| Physical Therapy          | Occupational Therapy                        |
| Speech Language Pathology | Medical Social Services                     |
| Nutrition                 | Medical Supplies, Equipment, and Appliances |

The Board of Directors of Jewish Home Lifecare, Community Services will be as follows:

**Russell Makowsky** – Chair, Trustee  
Chief Financial Officer, Senior Managing Director,  
Tishman Speyer

**Olumide S. Wilkey** – Treasurer, Trustee  
Certified Financial Advisor, UBS Financial  
Services, Inc.

#### Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester
- Educational Alliance (2006-present)

**Mel P. Barkan, Esq.** – Trustee  
Counsel, Windels Marx Lane and Mittendorf, LLP

**Ann Berman** – Trustee  
Freelance Writer, Self

#### Affiliations:

- The Bridge, Inc. and Affiliates

**Susan Glickman** – Vice Chair, Trustee  
Retired

Affiliations:

- Senior Health Partners (2005-2010)
- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Edward A. Greenberg** – Trustee  
Retired

Affiliations:

- Senior Health Partners (2002-2006)
- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,

**Joy A. Henshel** – Trustee  
Retired

Affiliations:

- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Jonathan Hochberg** – Trustee  
President, Hillview Capital Advisors, LLC

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Marilyn Margon** – Trustee  
Self, Consulting Business

**Joan Wachtler, LCSW** – Trustee  
Retired

**Edward W. Gordon** – Trustee  
President/Executive, W.W. Gordon & Co., Inc. –  
Preservation Capital Partners

**Scott A. Hasen** – Trustee  
Vice President, Healthcare Research Analyst,  
J.P Mogan

**Nancy Hirschtritt, LCSW** – Trustee  
Retired

**William Kummel** – Trustee  
Logistics and Marketing Management  
Consultant, Rational Partners, LLC

**David A. Strumwasser, Esq.** – Trustee  
Retired

Affiliations:

- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Audrey S. Weiner, NHA** – Trustee  
President/CEO, Jewish Home Lifecare

Affiliations:

- Senior Health Partners (2002-2010)
- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

The Board of Directors of Jewish Home Lifecare System is as follows:

**Stanley H. Pantowich, CPA** – Chair  
Chairman, TAG Associates, LLC

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**David R. Haas, CPA** – Vice Chair and Treasurer  
Self Employed, DRH Associates

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Jay Furman, Esq.** – Trustee  
President, RD Management, LLC

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Joel A. Hirshtritt, Esq.** – Trustee  
Lawyer, Tannenbaum Helpem Syracuse and Hirshtritt, LLC

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Michael Luskin, Esq.** – Trustee  
Partner, Hughes Hubbard & Reed, LLP

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Lynn Oberlander, Esq.** – Trustee  
General Counsel, The New Yorker

**Susan Glickman** – Vice Chair, Trustee  
(Previously Disclosed)

**Lisa Feiner** – Trustee  
Health Coach, Self

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Elizabeth L. Grayer, Esq.** – Trustee  
President, Legal Momentum

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Jonathan Hochberg** – Trustee  
(Previously Disclosed)

**Russell E. Makowsky, Esq.** – Trustee  
(Previously Disclosed)

**Paul D. Polivy, CPA** – Trustee  
Managing Director, Citigroup

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Gene D. Resnick, M.D.** – Trustee  
Chief Medical Officer, Aptiv Solutions, Inc.

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

Affiliations:

- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Audrey S. Weiner** – Trustee  
(Previously Disclosed)

A search of the individuals named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List.

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

The NYS Unified Court System verifies the active attorney registrations associated with this application.

The Bureau of Professional Credentialing has indicated that Audrey S. Weiner NHA license #03864 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 has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A 10 year review of the operations of the following facilities was performed as part of this review:

Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx LTHHCP  
Jewish Home Lifecare, Manhattan LTHHCP  
Hapi Westchester  
Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx  
Jewish Home Lifecare, Manhattan  
Jewish Home Lifecare, Sarah Neuman Center, Westchester  
Senior Health Partners  
The Bridge, Inc. and Affiliates  
Educational Alliance

The Division of Certification and Surveillance has indicated that the hospitals reviewed have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated the following:

Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx was fined six thousand dollars (\$6,000) pursuant to a stipulation and order dated September 18, 2010 for surveillance findings of June 23, 2009. Deficiencies were found under 10 NYCRR 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.12 Quality of Care and 415.26 Organization and Administration.



Jewish Home and Hospital for the Aged was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dates August 25, 2011 for surveillance findings of March 12, 2010. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care: Hydration.

Jewish Home and Hospital for the Aged was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dates March 22, 2010 for surveillance findings of February 18, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

Jewish Home and Hospital for the Aged was fined two thousand five hundred dollars (\$2,500) pursuant to a stipulation and order dates March 3, 2006 for surveillance findings of October 30, 2003. Deficiencies were found under 10 NYCRR 415.12(b) Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.4(b)(1)(2)(3) Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.15(b)(2)(iii) Medical Services: Physician Services.

Sarah Neuman Center for Healthcare and Rehabilitation was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dates August 8, 2008 for surveillance findings of January 18, 2008. Deficiencies were found under 10 NYCRR 415.12(c)(1)&(2) Quality of Care: Pressure Sores.

The information provided by the Bureau of Quality Assurance and Surveillance 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. When code violations have occurred, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation which a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violations.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agencies and long term home health care programs have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Mental Health has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

The applicant has also requested approval to serve the following upstate counties: Rockland County. A determination regarding the recommendation for approval or disapproval for the establishment of a CHHA to serve that upstate county will be presented to the Council at a future meeting. Therefore, this application has been amended by the Department to remove the request for that upstate county at this time.

Recommendation

**From a programmatic perspective, disapproval as proposed. Approval as amended by the Department is recommended.**

## Financial Analysis

Sublease Agreement

The applicant has submitted a draft sublease agreement for the site that they will occupy, which is summarized below:

*Premises:* 5,300 square feet located at 104 West 21<sup>st</sup>. Street, New York, New York  
*Sublessor:* Jewish Home Lifecare, Manhattan  
*Sublessee:* Jewish Home Lifecare Community Services

*Term:* 8 years  
*Rental:* \$135,525 (\$26.06 per sq. ft.)  
*Provisions:* The sub lessee is just responsible for the lease rental payments.

Operating Budget

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

|                          | <u>Year One</u>  | <u>Year Three</u> |
|--------------------------|------------------|-------------------|
| Medicaid Fee-for-Service | \$1,973,805      | \$1,180,610       |
| Medicaid Managed Care    | 1,885,112        | 10,204,368        |
| Medicare Fee-for-Service | 1,234,687        | 3,887,548         |
| Medicare Managed Care    | 145,995          | 443,520           |
| Other                    | <u>15,000</u>    | <u>45,000</u>     |
| Total Revenues           | \$5,254,599      | \$15,761,046      |
| <br>                     |                  |                   |
| Expenses                 | <u>5,416,254</u> | <u>15,441,497</u> |
| <br>                     |                  |                   |
| Net Gain                 | (\$161,655)      | \$319,549         |

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

|                          | <u>Year One</u> | <u>Year Three</u> |
|--------------------------|-----------------|-------------------|
| Medicaid Fee-for-Service | 43.61%          | 78.50%            |
| Medicaid Managed Care    | 43.69%          | 8.73%             |
| Medicare Fee-for-Service | 8.65%           | 8.65%             |
| Medicare Managed Care    | 1.40%           | 1.41%             |
| Charity Care             | 2.65%           | 2.71%             |

Expense assumptions are based on nursing visits of approximately 3 visits per month; rehabilitation therapy, approximately 2 visits per month; social services, approximately 1 visit per month, and home health aides, approximately 20 visits per month. Utilization assumptions are based on the historical experience of facilities in the geographical area. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements estimated at \$2,573,582, appear reasonable based on two months of third year expenses and will be provided through existing operations. Presented as BFA Attachment A are the 2010 and 2011 certified financial statements of Jewish Home Lifecare Community Services, which indicates the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates that the applicant will have a loss of \$161,655 and a gain of \$319,549 during the first and third years, respectively. Revenues are reflective of current payment rates, as well as the recent implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

As shown on BFA Attachment A, Jewish Home and Lifecare, Manhattan had an average negative working capital position and an average positive net asset position. The applicant has indicated that the reason for the negative working capital position is that the facility did not receive payment for the 2002 rebased rate until 2011. The applicant achieved an average operating excess of revenues over expenses of \$2,821,960 during the period shown. Also, the applicant achieved an average change in net assets of \$2,886,075 during the period shown. The applicant incurred a change in net assets of (\$4,043,930) in 2011 due to adjustments to pension liability funded status of (\$8,434,432).

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

Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary- Jewish Home Lifecare, Manhattan and Subsidiaries |
| BFA Attachment B | Organizational Chart of Jewish Home Lifecare System                 |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 a certified home health agency (CHHA) to serve Kings, Queens, Richmond, Bronx, New York, Westchester, Rockland, Nassau and Suffolk Counties, 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

121252 E

Jewish Home Lifecare, Community Services

APPROVAL CONTINGENT UPON:

1. Submission of new incremental budgets to be re-evaluated for financial feasibility for all counties approved for establishment or expansion that are acceptable to the Department of Health. [BFA]
2. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]
3. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]

APPROVAL CONDITIONED UPON:

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299



# Public Health and Health Planning Council

Project # 121222-E  
**Lutheran CHHA, Inc.**

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

**Program: Certified Home Health Agency**  
**Submitted: April 16, 2012**

## Executive Summary

### Description

Lutheran CHHA, Inc., a to-be-formed not-for-profit corporation, requests approval to establish a certified home health agency (CHHA) to serve Kings, Queens, Bronx, New York and Richmond counties. The CHHA will work as part of the continuum of care provided by Lutheran Healthcare, a critical safety net health care network and social support system, which is committed to providing a broad and comprehensive spectrum of high quality health care services. Other pieces of the network are a 468-bed acute care hospital (Lutheran Medical Center), an FQHC (Lutheran Family Health Center Network), a 240-bed residential health care facility (Lutheran Augustana Center for Extended Care and Rehabilitation), a Long term Home Health Care Program operated by Lutheran Augustana, a Licensed Home Care Services Agency (Community Care Organization, Inc.), senior housing programs, and other community based programs.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Lutheran CHHA submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

Need Summary  
Lutheran Medical Center's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

Program Summary  
A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

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

|         |              |                  |
|---------|--------------|------------------|
| Budget: | Revenues:    | \$ 3,773,275     |
|         | Expenses:    | <u>3,232,900</u> |
|         | Gain/(Loss): | \$ 540,375       |

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

## 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 sublease agreement that is acceptable to the Department of Health. [BFA]
2. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]
3. Submission of a photocopy of the signed and dated Certificate of Incorporation of Lutheran CHHA, Inc., acceptable to the Department. [CSL]
4. Submission of evidence of adoption of the amended and restated bylaws of Lutheran CHHA, Inc. acceptable to the Department. [CSL]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Council Action Date

**August 9, 2012.**





## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Lutheran Medical Center's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational

capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

**Programmatic Analysis**

Background

Lutheran CHHA, Inc., is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the downstate counties of Bronx, Kings, New York, Queens, and Richmond. Although the corporation will have a working affiliation, and share common board members, with the Lutheran Healthcare System and its affiliates, the corporation Lutheran CHHA, Inc., will have no member, parent, or subsidiary corporations. All board members of the proposed Lutheran CHHA, Inc., are also board members of Lutheran Healthcare System, an existing not-for-profit corporation with the following subsidiaries:

- Lutheran Medical Center (Hospital),
- Lutheran Family Health Center Network (Federally Qualified Health Center),
- Lutheran Augustana Center for Extended Care and Rehabilitation (RHCF and LTHHCP),
- Community Care Organization, Inc. (LHCSA), and
- Health Plus (Medicaid Managed Care Plan), which was recently purchased by, acquired by, and merged into AmeriGroup MLTCP in October, 2011.

The applicant proposes to operate the CHHA from an office located at 5407 Second Avenue, Brooklyn, New York 11220. 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 |
| Physician Services        | Medical Supplies, Equipment, and Appliances |                         |
| Nutrition                 |   |                         |

The members of the Board of Directors of Lutheran CHHA, Inc. will be as follows:

**Wendy Z. Goldstein**, Chairperson  
President & CEO, Lutheran Medical Center Hospital

**Rosanne Raso, R.N.**, Secretary  
Senior VP for Patient Care Services, Chief Nursing Officer, Lutheran Medical Center Hospital

**Richard Langfelder**, Treasurer  
Executive VP / CFO, Lutheran Medical Center Hospital

All are affiliated with the Lutheran Healthcare System providers listed above.

A search of the individuals named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List.

The Office of the Professions of the NYS Education Department indicates no issues with the RN license associated with this application.

A ten year review of the following facilities was performed as part of this review:

Lutheran Medical Center (Hospital),  
Lutheran Family Health Center Network (Federally Qualified Health Center),  
Lutheran Augustana Center for Extended Care and Rehabilitation (RHCF and LTHHCP),  
Community Care Organization, Inc. (LHCSA), and  
Health Plus (Medicaid Managed Care Plan)

The Division of Residential Services has indicated the following:

Lutheran Augustana Center for Extended Care and Rehabilitation RHCF had a civil penalty of \$22,000 imposed pursuant to a stipulation and order dated March 12, 2012 for surveillance findings of February 16, 2011, and April 29, 2011. Violations were cited in 10 NYCRR 415.12(l)(1) Quality of Care: Unnecessary Medications, 415.22(a)(1 – 4) Complete Resident Records / Clinical Records, and 415.12(j) Quality of Care: Hydration.

The information provided by the Division of Residential Services 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.

The information provided by the Division of Certification and Surveillance has indicated that the hospital and federally qualified health center have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Division of Home and Community Based Services has indicated the following:

Lutheran Augustana Center for Extended Care and Rehabilitation LTHHCP had a civil penalty of \$2,500 imposed pursuant to a stipulation and order dated May 24, 2011 for surveillance findings of August 5, 2010. Violations were cited in 10 NYCRR 763.11(a) Governing Authority, 763.4(h) Policy and Procedure of Service Delivery, 763.6(b) and (c) Patient Assessment and Plan of Care, and 763.14(b) Records and Reports.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agency and long term home health care program have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Managed Care has indicated that the Medicaid managed care plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted a draft sublease agreement for the site that they will occupy, which is summarized below:

|                   |  |
|-------------------|--|
| <i>Premises:</i>  | The basement of the building located at 5407 Second Avenue, Brooklyn, NY, and the square footage is approx. 2,000 sq. ft.  |
| <i>Sublessor:</i> | Lutheran Augustana Center for Extended Care and Rehabilitation   |
| <i>Sublessee:</i> | Lutheran CHHA, Inc.  |
| <i>Term:</i>      | 5 years to terminate on December 29, 2016  |
| <i>Rental:</i>    | Year 1 \$43,219.56 (\$3,601.63 per month), Year 2 \$44,516.16 (\$3,709.68 per month), Year 3 \$45,851.16 (\$3,820.97 per month), Year 4 \$47,227.20 (\$3,935.60 per month) and Year 5 \$48,644.04 (\$4,053.67 per month) |
| <i>Provisions</i> | The sublessee shall be responsible for 50% of maintenance, utilities costs and provide their own insurance.  |

The master landlord is L & B Realty Assoc, LLC. The applicant states that the lease is an arm's length arrangement between the Landlord L & B Realty Assoc., LLC, and the Sub-lessor (Lutheran Augustana Center for Extended Care and Rehabilitation), but it is a non-arm's length arrangement between the (sub-lessor) and the sub-lessee. Letters from realtors have been submitted, which indicate that the current rental rates per square foot are within the reasonable range for square footage in the area.

### Operating Budget

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

|                          | <u>Year One</u>    | <u>Year Three</u>  |
|--------------------------|--------------------|--------------------|
| Medicaid Managed Care    | \$415,262          | \$1,074,525        |
| Medicare Fee-for-Service | 772,766            | 2,342,072          |
| Commercial Managed Care  | 117,685            | 356,678            |
| Total Revenues           | \$1,305,713        | \$3,773,275        |
| <br>                     |                    |                    |
| Expenses                 | <u>\$1,203,798</u> | <u>\$3,232,900</u> |
| <br>                     |                    |                    |
| Net Income/(Loss)        | <u>\$101,915</u>   | <u>\$540,375</u>   |

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

|                          | <u>Year One and Three</u> |
|--------------------------|---------------------------|
| Medicaid Managed Care    | 34.50%                    |
| Medicare Fee-for-Service | 53.50%                    |
| Commercial Managed Care  | 10.00%                    |
| Charity Care             | 2.00%                     |

Expense assumptions are based on current salaries in the area for CHHA services. Utilization assumptions are based on the applicant's review of the current regional utilization for CHHA services using a conservative approach to overall utilization. Revenues are reflective of current payment rates as well as recent implementation of the Medicaid Episodic Payment System.

### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements estimated at \$538,817, appears reasonable based on two months of third year expenses and will be provided by Lutheran Healthcare. Presented as BFA Attachment A are the 2010 and 2011 certified financial statements, which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirement.

The submitted budget indicates that the applicant will achieve a net excess of revenues over expenses of \$101,915 and \$540,375 during the first and third years, respectively. The first year loss will be offset from working capital funds. Revenues are based on current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

As shown on Attachment A 2010-2011 Certified Financial Summary for Lutheran Healthcare, the entity had an average positive working capital position and an average positive net asset position from the period 2010 through 2011. Also, the entity achieved an average net loss for the period 2010-2011 of \$1,167,500. The operations however, in 2011, had a positive net income of \$7,806,000.

The 2010 losses were attributable to the operations of Healthplus, Lutheran Augustana and Lutheran Healthcare's related professional corporations, which can be seen on BFA Attachment B the 2010-2011 breakout of the combined certified financial statements for Lutheran Healthcare.

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

Recommendation

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

## Attachments

|                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary- 2010-2011 certified financial statements for Lutheran Healthcare       |
| BFA Attachment B | 2010-2011 breakout of the combined certified financial statements for Lutheran Healthcare |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 a certified home health agency (CHHA) to serve Kings, Queens, Bronx, New York and Richmond counties, 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

121222 E

Lutheran CHHA, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]
2. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]
3. Submission of a photocopy of the signed and dated Certificate of Incorporation of Lutheran CHHA, Inc., acceptable to the Department. [CSL]
4. Submission of evidence of adoption of the amended and restated bylaws of Lutheran CHHA, Inc. acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299



# Public Health and Health Planning Council

## Project # 121247-E Queens Long Island Certified Home Health Agency

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

**Program:** Certified Home Health Agency  
**Submitted:** April 18, 2012

### Executive Summary

#### Description

Queens Long Island Certified Home Health Agency, LLC, an existing NYS limited liability company, requests approval to establish a certified home health agency (CHHA) to serve Queens, Nassau and Suffolk counties. The CHHA which will be part of Flushing Manor provider family, which includes: the Dr. William O. Benenson Rehabilitation Pavilion, a 302-bed residential health care facility (RHCF); Flushing Manor Nursing Home LTHHCP; Flushing Manor Care Center, a 278-bed RHCF; Flushing Manor Nursing Home, a 227-bed RHCF; Flushing Manor Dialysis Center, a six-station dialysis center; and Medford Hamlet Assisted Living, a 200-bed program.

The proposed CHHA has four members whom each have 25% membership interest. They are as follows: Michael Benenson, Sharon Benenson, Amy Benenson, and Blanche Benenson.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Queens Long Island Certified Home Health Agency submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

#### Need Summary

Queens Long Island Certified Home Health Agency, LLC's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

#### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

#### Financial Summary

There are no project costs associated with this application.

|                     |                     |                  |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 6,485,636     |
|                     | <i>Expenses:</i>    | <u>4,966,119</u> |
|                     | <i>Gain/(Loss):</i> | \$ 1,519,517     |

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



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]
2. Submission of a photocopy of the applicant's fully executed and dated 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 Lease between 36-25 Parsons Realty LLC, c/o S.W. Management LLC (Landlord) and FMNH, LLC, as tenant (Assignor), including, but not limited to, a description of the leased premises (Leased Premises), which must be acceptable to the Department. [CSL, BFA]
4. Submission of a photocopy of a fully executed and dated Assignment of Lease among the Landlord, the Assignor, and the applicant, including, but not limited to, a description of the portion of the Leased Premises, which are now being assigned to the applicant, which must be acceptable to the Department. [CSL, BFA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Queens Long Island Certified Home Health Agency, LLC's (QLI CHHA) proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

**Programmatic Analysis**

Background

Queens Long Island Certified Home Health Agency, LLC, is an existing proprietary limited liability company requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the downstate counties of Queens, Nassau, and Suffolk. The LLC will be related to the Flushing Manor family of providers, in that the members of Queens Long Island Certified Home Health Agency, LLC, are also LLC members, corporate stockholders, or partners in the Flushing Manor family of providers listed below. However, Queens Long Island Certified Home Health Agency, LLC, will have no corporate member, parent, or subsidiary entities in its organizational structure. All of the LLC members of Queens Long Island Certified Home Health Agency, LLC, are also LLC members, corporate stockholders, or partners of the following Flushing Manor family of providers:

- Flushing Manor Geriatric Center, Inc., d/b/a Dr. William O. Benenson Rehabilitation Pavilion (RHCF), Flushing Manor Care Center, Inc. (RHCF),
- FMNH LLC, d/b/a Flushing Manor Nursing Home (RHCF and LTHHCP),
- Manhattanville SBV, LLC, d/b/a Manhattanville Health Care Center (RHCF) – up through 2005 only,
- Flushing Manor Dialysis Center, LLC (D&TC Chronic Renal Dialysis Center),
- The Medford Hamlet Assisted Living Program (ALP),
- Medford Hamlet Home Care (LHCSA),
- Hudson Valley Home Health Care, LLC (PHHPC-approved, but not-yet-operational LHCSA, which will be a component of the proposed, but not-yet-approved Walkkill Hamlet Assisted Living Program).

The applicant proposes to operate the CHHA from an office located at 36-25 Parsons Boulevard, Flushing, New York 11354. 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            | Physician Services      |
| Medical Supplies, Equipment, and Appliances |                      | Housekeeper             |

The members and managers of Queens Long Island Certified Home Health Agency, LLC, and the percentage of ownership interest for each, are as follows:

- |  |  |
|--|--|
| <b>Amy L. Benenson, Registered Architect – 25%</b><br>Building Coordinator / Facilities and Project Manager, Flushing Manor Nursing Home | <b>Blanche S. Benenson, MD – 25%</b><br>Pediatric Physician, Montefiore Medical Center |
| <b>Michael J. Benenson, LNHA – 25%</b>   | <b>Sharon Benenson Sydney, LNHA – 25%</b>  |

Manager, Filben Development, LLC (senior housing real estate development),  
Board Chairman, CareNext Insurance, Inc. (health care professional liability insurance),  
Board Chairman, The SubAcute Network, LLC (health care purchasing and support services),  
President, Benenson and Associates, Inc. (health care consulting)

Vice President, SCT Wireless (electronics)

All four LLC members are also managers of the LLC, and all are affiliated with each of the Flushing Manor family of providers listed above.

A search of the individuals named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List.

The Office of the Professions of the NYS Education Department, the NYSDOH Physician Profile, and the NYSDOH Office of Professional Medical Conduct all indicate no issues with the professional health care licenses, and other professional licenses, associated with this application. The NYSDOH Bureau of Professional Credentialing has indicated that the active nursing home administrator licenses associated with this application are in good standing with no history of disciplinary action by the Board of Examiners of Nursing Home Administrators.

A review of the following facilities was performed for the affiliated time periods listed:

- Flushing Manor Geriatric Center, Inc., d/b/a Dr. William O. Benenson Rehabilitation Pavilion (RHCF) – 2002 to present,
- Flushing Manor Care Center, Inc. (RHCF) – 2002 to present,
- FMNH LLC, d/b/a Flushing Manor Nursing Home (RHCF and LTHHCP) – 2008 to present,
- Manhattanville SBV, LLC, d/b/a Manhattanville Health Care Center (RHCF) – 2002 to 2005,
- Flushing Manor Dialysis Center, LLC (D&TC Chronic Renal Dialysis Center) – 2008 to present,
- The Medford Hamlet Assisted Living Program (ALP) – 2007 to present,
- Medford Hamlet Home Care (LHCSA) – 2008 to present

The Division of Residential Services has indicated the following:

Flushing Manor Geriatric Center, Inc., d/b/a Dr. William O. Benenson Rehabilitation Pavilion RHCF had a civil penalty of \$6,000 imposed pursuant to a stipulation and order dated August 28, 2007 for surveillance findings of June 22, 2006, and July 26, 2006. Violations were cited in 10 NYCRR 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.12(h)(2) Quality of Care: Accidents, and 415.12 Quality of Care.

Flushing Manor Care Center, Inc. RHCF had a civil penalty of \$1,000 imposed pursuant to a stipulation and order dated May 29, 2007 for surveillance findings of February 26, 2004. Violations were cited in 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

The information provided by the Division of Residential Services has indicated that the nursing homes reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has indicated that the renal dialysis center has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agency and long term home health care program 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 Assisted Living has indicated that the assisted living program has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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

|                           |
|---------------------------|
| <b>Financial Analysis</b> |
|---------------------------|

Assignment of Lease

The applicant has submitted a draft assignment and assumption of the lease agreement between current landlord, 36-25 Parsons Realty, LLC, and Assignor to be assigned to Queens Long Island Certified Home Health Agency, LLC upon approval of the CON application by PHHPC for the premises located at 36-25, known as lobby 1 and 2, Parsons Boulevard in Queens, the terms of which are summarized below:

- Assignor:* FMNH,LLC
- Assignee:* Queens Long Island Certified Home Health Agency, LLC
- Rental:* Year one- \$30,240 annually (\$2,520/month) with a 5% increase per year.
- Terms:* Until December 31, 2012 with a 3 year renewal
- Provisions:* Insurance , Maintenance and utilities

The applicant has stated there will be no patient care services provided at this location and is for administrative purposes only.

The assignment and assumption of lease is a non-arm's length agreement, since the members of FMNH, LLC and Queens Long Island CHHA are the same. Letters of opinion from licensed commercial real estate brokers have been submitted indicating rent reasonableness.

Operating Budget

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

|                | <u>Year One</u>  | <u>Year Three</u> |
|----------------|------------------|-------------------|
| Revenues:      |                  |                   |
| Medicaid       | \$ 570,499       | \$1,677,204       |
| Medicare       | 1,248,313        | 4,172,930         |
| Commercial     | <u>190,107</u>   | <u>635,502</u>    |
| Total Revenues | \$2,008,920      | \$6,485,636       |
| <br>           |                  |                   |
| Expenses       | <u>1,653,814</u> | <u>4,966,119</u>  |
| <br>           |                  |                   |
| Net Gain(Loss) | \$ 355,106       | \$ 1,519,517      |

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

| <u>Payor</u>             | <u>Year One and Year Three</u> |
|--------------------------|--------------------------------|
| Commercial Managed Care  | 10.0%                          |
| Medicare Fee-for-Service | 54.0%                          |

|                       |       |
|-----------------------|-------|
| Medicaid Managed Care | 34.0% |
| Charity Care          | 2.0%  |

Expense and utilization assumptions are based on the existing CHHA Program’s historical experience. 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 and year three for a conservative approach.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements estimated at \$827,687, appear reasonable based on two months of third year expenses and will be provided through proposed member’s equity. Presented as BFA Attachment A is the net worth statements of proposed members, which shows sufficient equity.

The submitted budget indicates that the applicant will achieve a \$355,106 and \$1,519,517 incremental net revenue in the first and third years of operations, respectively. Revenue is based on current payment rates for Certified Home Health Agencies. DOH staff has sensitized the budgets to reflect the effect of the EPS payments.

Presented on BFA Attachment C is the sensitivity analysis. The budget appears reasonable.

Presented as BFA Attachment B is the Pro-forma Balance Sheet for Queens Long Island Certified Home Health Agency, LLC, which shows member’s equity of \$827,687.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

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

|             |
|-------------|
| Attachments |
|-------------|

|                  |  |
|------------------|--|
| BFA Attachment A | Proposed Members Net Worth Statements            |
| BFA Attachment B | Pro-forma-Balance Sheet                          |
| BFA Attachment C | Sensitivity Analysis for Episodic Payment System |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 a certified home health agency (CHHA) to serve Queens, Nassau and Suffolk counties, 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

121247 E

Queens Long Island Certified Home Health Agency, LLC

APPROVAL CONTINGENT UPON:

1. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]
2. Submission of a photocopy of the applicant's fully executed and dated 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 Lease between 36-25 Parsons Realty LLC, c/o S.W. Management LLC (Landlord) and FMNH, LLC, as tenant (Assignor), including, but not limited to, a description of the leased premises (Leased Premises), which must be acceptable to the Department. [CSL, BFA]
4. Submission of a photocopy of a fully executed and dated Assignment of Lease among the Landlord, the Assignor, and the applicant, including, but not limited to, a description of the portion of the Leased Premises, which are now being assigned to the applicant, which must be acceptable to the Department. [CSL, BFA]

APPROVAL CONDITIONED UPON:

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299





# Public Health and Health Planning Council

## Project # 121446-E South Nassau Communities Hospital

**County:** Nassau (Baldwin)  
**Purpose:** Construction

**Program:** Certified Home Health Agency  
**Submitted:** June 21, 2012

### Executive Summary

#### Description

South Nassau Communities Hospital, an existing long-term home health care program (LTHHCP) serving Nassau County, requests approval to establish to a new Article 36 certified home health agency (CHHA) to serve Nassau, Queens, and Suffolk counties. Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing LTHHCP requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department of Health issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012. The DAL identified LTHHCPs that did not submit an application in response to the January 25, 2012 RFA as eligible to submit a CON application requesting approval as a general purpose CHHA. CON applications were initially due on June 15, 2012, but a June 11, 2012 clarification letter was issued extending the CON submission due date to June 22, 2012.

South Nassau Communities Hospital submitted an application in response to the DAL, and was awarded approval. This CON application is in response to the approval via the expedited review.

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.

DOH Recommendation  
Contingent approval.

#### Need Summary

South Nassau Communities Hospital's application clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

#### Program Summary

South Nassau Communities Hospital Long Term Home Health Care Program is currently in compliance with all applicable codes, rules and regulations.

#### Financial Summary

There are no project costs associated with this application.

|                     |                     |                  |
|---------------------|---------------------|------------------|
| Incremental Budget: | <i>Revenues:</i>    | \$ 5,788,774     |
|                     | <i>Expenses:</i>    | <u>5,256,167</u> |
|                     | <i>Gain/(Loss):</i> | \$ 532,607       |

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. The applicant must submit a plan acceptable to the Department of Health that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing Long Term Home Health Care Plan (LTHHCP) requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

### Solicitation

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012. The DAL identified LTHHCPs that did not submit an application in response to the January 25, 2012 RFA as eligible to submit a CON application requesting approval as a general purpose CHHA. CON applications were initially due on June 15, 2012, but a June 11, 2012 clarification letter was issued extended the CON submission due date to June 22, 2012.

### Review

Reviews were conducted and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's responses to CON Schedule 21. A June 11, 2012 clarification letter to the May 10, 2012 DAL letter informed potential applicants that the process to establish or expand existing CHHAs in NYS is based on the demonstration of need and or the ability of the organization to facilitate Medicaid Redesign Initiatives. The applicant was expected to address these criteria in their responses to the questions in CON Schedule 21.

From this review, applicants were recommended in each county proposed based on how well their proposal addressed the criteria in CON Schedule 21. Ultimately, three of thirteen applications were recommended for approval to establish a new general purpose CHHA in one or more of the eight Downstate counties.

South Nassau Communities Hospital's application clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on Section 709.1(a) of Title 10 NYCRR and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

### Recommendation

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

## Programmatic Analysis

### Background

South Nassau Communities Hospital, Inc. is an existing not-for-profit corporation that operates an Article 36 certified home health agency and an Article 36 long term home health care program (LTHHCP) with approval to provide services in Nassau County.

The applicant is requesting approval to establish a new Article 36 certified home health agency to serve the residents of Queens, Nassau and Suffolk counties.

The applicant proposes to provide the following home health services; home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy, speech language pathology and lab.

South Nassau Communities Hospital Long Term Home Health Care Program is currently in compliance with all applicable codes, rules and regulations.

### Recommendation

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

## Financial Analysis

### Operating Budget

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

|                 | <u>Year One</u>  | <u>Year Three</u> |
|-----------------|------------------|-------------------|
| Revenues:       |                  |                   |
| Commercial      | \$421,341        | \$925,675         |
| Medicare        | 911,526          | 2,002,594         |
| Medicaid        | <u>1,302,022</u> | <u>2,860,506</u>  |
| Total Revenues: | \$2,634,889      | 5,788,775         |
| Expenses:       | \$2,449,272      | \$5,256,167       |
| Net Income:     | \$185,617        | \$532,608         |

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

|                          | <u>Year One and Three</u> |
|--------------------------|---------------------------|
| Commercial Managed Care  | 10%                       |
| Medicare Fee for Service | 54%                       |
| Medicaid Managed Care    | 34%                       |
| Charity Care             | 2%                        |

Expenses and utilization assumptions are based on historical experience of South Nassau Communities Hospital's existing CHHA and LTHHCP. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment system.

### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$876,028 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment A, is the financial summary of South Nassau Communities Hospital and Subsidiaries, which indicates the availability of sufficient funds.

The submitted budget indicates a net income of \$185,617 and \$532,608 for the first and third years, respectively. Revenue is based on current payment rates for certified home health agencies and the Medicaid Episodic Payment rates. The budget appears reasonable.

As shown on BFA Attachment A, a financial summary of South Nassau Communities Hospital and Subsidiaries indicates that the facility has experienced positive working capital, positive net asset position and generated net income of \$26,420,448 and \$8,111,178 for 2010 and 2011, respectively.

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      Financial Summary, South Nassau Communities Hospital and Subsidiaries

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 a new Article 36 certified home health agency (CHHA) to serve Nassau, Queens, and Suffolk counties, 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

121446 E

South Nassau Communities Hospital

APPROVAL CONTINGENT UPON:

1. The applicant must submit a plan acceptable to the Department of Health that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]

APPROVAL CONDITIONED UPON:

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Hedley Building - 6th Floor  
433 River Street  
Troy, New York 12180-2299

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

**August 9, 2012**

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**Book B**

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

**CATEGORY 4:** Applications Recommended for Approval with the Following:

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

**Certified Home Health Agencies – Establishment**

**Exhibit #21**

|    | <b><u>Number</u></b> | <b><u>Applicant/Facility</u></b>  | <b><u>E.P.R.C.<br/>Recommendation</u></b> |
|----|----------------------|---|---|
| 1. | 121286 E             | Lott Community Home Health<br>Care, Inc.<br>(New York County)<br>Ms. Regan - Interest | Contingent Approval                       |





# Public Health and Health Planning Council

Project # 121286-E  
**Lott Community Home Health Care, Inc.**

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

**Program: Certified Home Health Agency**  
**Submitted: April 20, 2012**

## Executive Summary

### Description

Lott Community Home Health Care, Inc., a to-be-formed not-for-profit corporation, requests approval to establish a certified home health agency (CHHA) to serve the residents in New York and Bronx County. The CHHA will offer the following services: medical social services, nursing, therapies, home health aide and nutrition.

The proposed corporation will have affiliation with SFDS Development Corporation (d/b/a Lott Community Development Corp.) and the Lott Assisted Living Operating Corp., with no parent and linked by overlapping Boards and common management. The purpose of these affiliated corporations is to serve the indigent population, build a better quality of life for New York's elderly, the formerly homeless, and individuals of low to moderate income, by providing them with clean, safe housing and supportive services that help them lead independent and fulfilling lives. In addition to the Assisted Living Program, they have developed over 800 units of affordable housing, helping to revitalizing East Harlem.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Lott Community Home Health Care, Inc. submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

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.

For a conservative approach, revenues were calculated in which the lower of incremental cost to episodic payment was projected for year one and year three, and budgets were sensitized.

DOH Recommendation  
Contingent approval.

### Need Summary

Lott Community Home Health Care's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review.

### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

### Financial Summary

There is no project costs associated with this application.

|         |                     |                  |
|---------|---------------------|------------------|
| Budget: | <i>Revenues:</i>    | \$ 3,062,778     |
|         | <i>Expenses:</i>    | <u>2,848,521</u> |
|         | <i>Gain/(Loss):</i> | \$ 214,257       |

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

## 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 sublease agreement that is acceptable to the Department of Health. [BFA]
2. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 760.8, the applicant shall be providing services in the entire geographic area approved by the Council within one year of the Council's approval. The failure, neglect or refusal of an applicant for the establishment of a new certified home health agency to commence operation of the certified home health agency within one year of issuance of the Council's approval or contingent approval of the application shall constitute an abandonment of the application by the applicant, with any such approval to be deemed cancelled and withdrawn without further action of the Council. [CHA]

Council Action Date

**August 9, 2012.**

## Need Analysis

### Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

### Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012.

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

### Competitive Review

The applications were reviewed competitively by the Department and recommendations are being made separately for Downstate and Upstate counties. Downstate counties consist of the counties Kings, Queens, New York, Richmond, Bronx, Nassau, Suffolk, and Westchester. Upstate counties consist of the remaining counties in New York State not listed in the preceding Downstate counties. All applications were reviewed and ranked against other applicants for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they will be presented to the Public Health and Health Planning Council with other applicants who have requested the same county or counties.

The CON determination of need was based on the applicant's response to the RFA. The applications were reviewed competitively on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

From this review, applicants were ranked in each county proposed against other applicants for that county based on how well their proposal addressed each of the aforementioned criteria. The top ranked applications were then selected for recommendation for approval within each county. Ultimately, fourteen of eighty-seven applications were recommended for approval to expand or establish a new general purpose CHHA in one or more of the eight Downstate counties.

Lott Community Home Health Care's proposal clearly describes and adequately addresses each of the review criteria used to make determinations for this competitive review. This proposal demonstrates the applicant has the

organizational capacity to successfully implement the MRT initiatives and supports the goals of the Department in advancing these initiatives. The applicant demonstrates public need based on 709.1(a) and provides a description of community need and the health needs of the community supported by data. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrates the potential to produce efficiencies in the delivery of home care services. Finally, the application provides a description how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measureable and sustained improvement in performance.

Recommendation

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

**Programmatic Analysis**

Background

Lott Community Home Health Care, Inc. is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the downstate counties of Bronx and New York.

The applicant proposes to operate the CHHA from an office located at 1261 Fifth Avenue, New York, New York 10029. The applicant proposes to provide the following health care services:

- |                           |   |
|---------------------------|---|
| Nursing                   | Home Health Aide                            |
| Physical Therapy          | Occupational Therapy                        |
| Speech Language Pathology | Medical Social Services                     |
| Nutrition                 | Medical Supplies, Equipment, and Appliances |

The Board of Directors of Lott Community Home Health Care, Inc. will be as follows:

**Leonard T. Walsh**, Chairman  
COO, St. Barnabas Hospital

**Brenda M. Matti-Orozco, M.D.**, Vice Chairman  
Chief, Division of Geriatric Medicine, St. Luke's-Roosevelt Hospital Center

Affiliation:

- St. Vincent's Catholic Medical Center

**Dennis M. Greenbaum, M.D.**, Secretary  
Director of Medicine, Harlem Hospital Center

**James D. Cameron, NHA**, Treasurer  
CEO, Ridgewood Bushwick Senior Citizens Council, Inc.

Affiliations:

- Medical Associates of St. Vincent's
- Medical Services of St. Vincent's
- Miller Practice for the Performing Arts
- Lott Foundation

Affiliation:

- Incarnation Children's Center
- Help/psi, Inc.
- Buena Vida Continuing Care & Rehab Center

**Brenda J. Brown**, Director  
Retired

**Patricia J. Francis, R.N.**, Director  
Retired

Affiliation:

- St. Luke's-Roosevelt Hospital Center (3/94-4/07)

**Leticia L. Gotay**, Director  
Executive Director, St. Luke's-Roosevelt  
Hospital, Department of Medicine

**Anthony J. Lechich, M.D.**, Director  
Chief Medical Officer, Terence Cardinal Cooke  
Health Care Center (Archcare)

**Neil J. O'Connell**, Director  
Catholic Campus Ministry, Catholic  
Archdiocese of New York

**Carmen M. Villegas**, Director  
Coordinator, Immunology Clinic,  
Lincoln Hospital

Affiliations:

- Project CREATE, Inc.
- CREATE Young Adult Center
- CREATE, Inc. Outpatient Services
- Residential Facility Project CREATE

All of the board members of Lott Community Home Health Care, Inc. also sit on the board of directors of Reverend Robert V. Lott Assisted Living Residence.

A search of the individuals named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List.

The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

The Bureau of Professional Credentialing has indicated that James D. Cameron NHA license #02857 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 currently has an Assisted Living Facility application pending with the Department.

A review of the following facilities was performed as part of this review:

St. Vincent's Catholic Medical Center (3/94 – 4/07)  
Incarnation Children's Center (2006 – present)  
St. Luke's-Roosevelt Hospital Center (2005 – present)  
Help/psi, Inc. (06/2008 – present)  
Buena Vida Continuing Care & Rehab Center (2/12 – present)  
Reverend Robert V. Lott Assisted Living Residence LHCSA (2002 – present)

The Division of Certification and Surveillance has indicated that the hospitals reviewed have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Bureau of Quality Assurance and Surveillance 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.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agencies and long term home health care programs have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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

## Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft sublease agreement for the site that they will occupy, which is summarized below:

- Premises:* 2,000 sq. ft. located at 1255 Fifth Avenue in the Borough of Manhattan, New York.
- Sublessor:* Lott Assisted Living Operating Corporation
- Sublessee:* Lott Community Home Health Care, Inc.
- Term:* 3 years
- Rental:* Year 1 and Year 2 - \$99,906 (\$49.99 per sq. ft.)  
Year 3 - \$102,996 (\$51.50 per sq. ft.)
- Provisions:* The sublessee shall be responsible for maintenance, utilities and real estate taxes.

The master landlord is SFDS Development Corporation, which is affiliated with the proposed entity.

Operating Budget

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

|                                  | <u>Year One</u>    | <u>Year Three</u>  |
|----------------------------------|--------------------|--------------------|
| Medicaid-Fee-for-Service         | \$52,529           | \$106,738          |
| Medicaid Managed Care            | 998,070            | 2,027,996          |
| Medicare Fee-for-Service         | 17,786             | 36,138             |
| Medicare Managed Care            | 337,939            | 686,927            |
| Commercial Fee-for-Service       | 40,697             | 82,710             |
| Private Pay                      | 29,423             | 59,724             |
| Other                            | <u>30,870</u>      | <u>62,545</u>      |
| Total Revenues                   | \$1,507,314        | \$3,062,778        |
| <br>                             |                    |                    |
| Expenses                         | <u>\$1,547,628</u> | <u>\$2,848,521</u> |
| <br>                             |                    |                    |
| Excess of Revenues over Expenses | <u>\$(40,314)</u>  | <u>\$214,257</u>   |

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

|                            | <u>Year One</u> | <u>Year Three</u> |
|----------------------------|-----------------|-------------------|
| Medicaid Fee-For-Service   | 1.45%           | 1.45%             |
| Medicaid Managed Care      | 27.64%          | 27.64%            |
| Medicare Fee-For-Service   | 2.62%           | 2.62%             |
| Medicare Managed Care      | 49.97%          | 49.96%            |
| Commercial Fee-For-Service | 14.29%          | 14.30%            |
| Private Pay                | 1.94%           | 1.94%             |
| Charity Care               | 2.09%           | 2.09%             |

Expense assumptions are based on current salaries in the area for CHHA services. Utilization assumptions are based on the applicant's discussions with former CHHA nurses currently employed by the applicant's Assisted Living Program and consultation with former CHHA director from a different CHHA organization. Revenues are reflective of current payment rates as well as recent implementation of the Medicaid Episodic Payment System.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements estimated at \$474,754, appears reasonable based on two months of third year expenses and will be provided by the Lott Assisted Living Operating Corporation. Presented as BFA Attachment A are the 2010 and 2011 certified financial statements of Lott Assisted Living Operating Corporation and deSales Assisted Living Development Corporation, which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirement.

The submitted budget indicates that the applicant will achieve a net excess of revenues over expenses of (\$40,314) and \$214,257 during the first and third years, respectively. The first year loss will be offset from working capital funds. Revenues are based on current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

As shown on Attachment A, the entity had an average positive working capital position and an average positive net asset position from the period 2010 through 2011. Also, the entity achieved an average change in net assets of \$406,376 from the period 2010 through 2011.

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

#### Recommendation

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

## Attachments

BFA Attachment A

Financial Summary - Lott Assisted Living Operating Corporation and deSales Assisted Living Development Corporation.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 9<sup>th</sup> day of August, 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 a certified home health agency to serve the residents in New York and Bronx County, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

RESOLVED, that 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

121286 E

Lott Community Home Health Care, Inc.



APPROVAL CONTINGENT UPON:

1. Submission of an executed sublease agreement that is acceptable to the Department of Health. [BFA]
2. The applicant must submit a plan acceptable to the Department that details how it will achieve compliance with the provision of no less than 2% charity care in accordance with all the requirements outlined in Section 763.11(a)(11) of Title 10 NYCRR. [CHA]

APPROVAL CONDITIONED UPON:

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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