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

***AGENDA***

***October 11, 2012***

***10:00 a.m.***

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

## I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

## II. ADOPTION OF THE 2013 MEETING SCHEDULE

**Exhibit #1**

## III. APPROVAL OF MINUTES

August 9, 2012 **Exhibit #2**

## IV. PROFESSIONAL

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

Dr. Theodore Strange, Chair
Three Cases

## V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

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

Jeffrey Kraut, Chair

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

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

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121204 C | NYU Hospitals Center (New York County) | Contingent Approval |
| 2. | 121431 C | Nyack Hospital (Rockland County) | Contingent Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121119 C | NYU Hospitals Center (New York County) | Contingent Approval |
| 2. | 121468 C | Montefiore Medical Center – Henry & Lucy Moses Div (Bronx County) | Contingent Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121363 C | Sunshine Children's Home and Rehab Center (Westchester County) | Contingent Approval |

**Upstate Certified Home Health Agencies - Construction** **Exhibit #6**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121288 C | Living Resources Certified Home Health Agency, Inc. (Albany 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**

**Hospice Services – Construction** **Exhibit #7**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121405 C | Hospice Buffalo Inc<br>(Erie County)<br>Mr. Booth - Interest | Contingent Approval |

**Residential Health Care Facilities – Construction** **Exhibit #8**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121084 C | Pine Haven Home<br>(Columbia County)<br>Mr. Fassler - Interest | Contingent Approval |
| 2. | 121183 C | Wayne County Nursing Home<br>(Wayne County)<br>Mr. Booth - Interest | Contingent Approval |

**Upstate Certified Home Health Agencies - Construction** **Exhibit #9**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121199 C | At Home Care, Inc.<br>(Otsego County)<br>Mr. Booth - Interest | Contingent Approval |
| 2. | 121225 C | Park Ridge at Home – Park Ridge Nursing Home, Inc.<br>(Monroe County)<br>Mr. Booth – Recusal<br>Mr. Fassler - Interest<br>Ms. Hines – Recusal<br>Mr. Robinson – Recusal | Contingent Approval |

| | | | |
|---|---|---|---|
| 3. | 121274 C | Finger Lakes Visiting Nurse Service, Inc.<br>(Ontario County)<br>Mr. Booth – Recusal<br>Ms. Hines – Recusal<br>Mr. Robinson – Recusal | Contingent Approval |
| 4. | 122122 C | Visiting Nurse Services in Westchester, Inc.<br>(Westchester County)<br>Ms. Regan - Interest | Contingent Approval |
| 5. | 122123 C | Dominican Sisters Family Health Service, Inc.<br>(Westchester County)<br>Ms. Regan - Interest | Contingent Approval |

**Downstate Certified Home Health Agency - Construction** **Exhibit #10**

| | **Number** | **Applicant/Facility** | **E.P.R.C. Recommendation** |
|---|---|---|---|
| 1. | 121203 C | Personal Touch Home Aides of New York, Inc.<br>(Kings County)<br>Mr. Fassler – 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 HSA

**Upstate Certified Home Health Agencies - Construction** **Exhibit #11**

| | **Number** | **Applicant/Facility** | **E.P.R.C. Recommendation** |
|---|---|---|---|
| 1. | 121315 C | Home Aide Service of Eastern New York, Inc.<br>d/b/a Eddy Visiting Nurse Service, Inc.<br>(Rensselaer County)<br>Ms. Hines – Abstained at EPRC | Approval |

**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 – Construction** **Exhibit #12**

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

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

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121075 C | Jewish Home Lifecare, Manhattan (New York County)<br>Mr. Fassler - Interest | 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 #14**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121104 B | AMSC, LLC d/b/a All Surg (Bronx County) | Contingent Approval |
| 2. | 121403 B | Union Square SC, LLC (New York County) | Contingent Approval |

**Diagnostic and Treatment Center – Establish/Construct** **Exhibit #15**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121354 E | Hillside Polymedic Diagnostic and Treatment Center (Queens County) | Approval |
| 2. | 121355 E | A Merryland Operating, LLC d/b/a Mermaid Health Center (Kings County) | Contingent Approval |
| 3. | 122001 E | Beacon Christian Community Health Center (Richmond County) | Approval |

**Residential Health Care Facilities – Establish** **Exhibit 16**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121481 E | Haym Solomon Home for the Aged (Kings County) | Contingent Approval |

**Certificate of Incorporation** **Exhibit #17**

| | Applicant | E.P.R.C. Recommendation |
|---|---|---|
| 1. | Betty's Be Brave Foundation, Inc. | Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 2169 L | Greene County Public Health Nursing Service (Greene County) | Contingent Approval |

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

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

**CON Applications**

**Acute Care Services – Establish/Construct** **Exhibit #19**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 122004 E | Fletcher Allen Partners/Community Providers, Inc.<br>(Clinton County)<br>Mr. Booth – Interest<br>Dr. Rugge – Abstaining/Interest | Contingent Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 092058 B | HBL SNF, LLC d/b/a The Rehabilitation and Care Institute at White Plains<br>(Westchester County)<br>Mr. Fassler – Recusal<br>Mr. Fensterman – Recusal | Contingent Approval |
| 2. | 121427 E | JOPAL Sayville, LLC d/b/a Petite Fleur Nursing Facility<br>(Suffolk County)<br>Mr. Fensterman - Recusal | Contingent Approval |
| 3. | 121407 E | 150 Riverside OP, LLC d/b/a The Riverside<br>(New York County)<br>Mr. Fensterman - Recusal | Contingent Approval |

**Certified Home Health Agencies – Establish** **Exhibit #21**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 112306 E | Hospitals Home Health Care Inc<br>(Oswego County)<br>Mr. Booth - Interest | Contingent Approval |
| 2. | 121358 E | Catholic Health Care System d/b/a Archcare<br>(Kings County)<br>Dr. Bhat – Recusal<br>Mr. Fassler - Recusal | Contingent Approval |

**Upstate Certified Home Health Agencies - Construction** **Exhibit #22**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121318 E | Northern Lights Home Health Care<br>(St. Lawrence County)<br>Mr. Booth – Interest | Contingent Approval |
| 2. | 122120 E | CenterLight Certified Home Health Agency<br>(Kings)<br>Mr. Fassler – Recusal | Contingent Approval |
| 3. | 122121 E | Jewish Home Lifecare, Community Services<br>(New York County)<br>Mr. Fassler – Interest<br>Ms. Regan - Interest | Contingent Approval |

**Certificate of Amendment of the Certificate of Incorporation** **Exhibit #23**

| | Applicant | E.P.R.C. Recommendation |
|---|---|---|
| 1. | North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation<br>Mr. Fensterman – Recusal<br>Mr. Kraut - Recusal | Approval |

**HOME HEALTH AGENCY LICENSURES** **Exhibit #24**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 1991 L | International Home Care Services of NY, LLC<br>(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)<br>Ms. Regan – Interest | Contingent Approval |
| 2. | 1943 L | Omega Care & Health Inc. d/b/a Right at Home<br>(Nassau and Suffolk Counties)<br>Ms. Regan – Interest | Contingent Approval |
| 3. | 2166 L | Tioga County Health Department<br>(Tioga County)<br>Mr. Booth – Interest | Contingent Approval |
| 4. | 1999 L | Gotham Per Diem, Inc.<br>(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)<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

**Ambulatory Surgery Centers – Establish/Construct** **Exhibit #25**

| Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|
| 121140 B | Endoscopy Center of Niagara (Niagara County)<br>Mr. Booth – Interest<br>Dr. Gutiérrez – Abstained at EPRC<br>Dr. Martin – Abstained at EPRC | 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**

## VI. 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

Karen Westervelt, Interim 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 Public Health Activities

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

## VII. PUBLIC HEALTH SERVICES

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

Dr. Boufford, Chair of the Public Health Committee

## VIII. HEALTH POLICY

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

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

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

**B. Adoption of Procedure for Approval of Limited Add-ons to Single Specialty Ambulatory Surgery Centers**

## IX. REGULATION

**Report of the Committee on Codes, Regulations and Legislation** **Exhibit #26**

Angel Gutiérrez, M.D., Chair

**For Emergency Adoption**

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

Part 9 of Title 10 NYCRR – Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited

**For Information**

Part 9 of Title 10 NYCRR – Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited

## X. NEXT MEETINGS

Planning Committee – October 30, 2012, NYC
Ad Hoc Committee to Lead the State Health Improvement Plan – October 31, 2012, NYC
Planning Committee – November 14, 2012, Albany
Committee Day – November 15, 2012, Albany
Full Council – December 6, 2012, Albany

## XI. ADJOURNMENT

# FOR ADOPTION

# Public Health and Health Planning Council

# 2013 Timeline

| PHHPC Mailing Date | PHHPC Committee Meeting Dates | PHHPC Meeting Dates | PHHPC Meeting Location |
|---|---|---|---|
| **01/15/13** | **01/24/13** | **02/07/13** | **NYC** |
| **03/12/13** | **03/21/13** | **04/11/13** | **Albany** |
| **05/14/13** | **05/23/13** | **06/06/13** | **NYC** |
| **07/09/13** | **07/18/13** | **08/01/13** | **Rochester** |
| **09/03/13** | **09/12/13** | **10/03/13** | **NYC** |
| **11/12/13** | **11/21/13** | **12/12/13** | **Albany** |

PHHPC meetings begin @ 10:00 a.m.

Albany, Empire State Plaza, Concourse Level Meeting Room 6
NYC Location = 90 Church Street, Meeting Rooms A/B, 4th Floor, New York, NY
Rochester = The National Museum of Play at The Strong One Manhattan Square Activity Room C and D

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

**Minutes**
**August 9, 2012**

The meeting of the Public Health and Health Planning Council was held on Thursday, August 9, 2012, at the Century House, 997 New Loudon Road (Route 9, Main Ball Room Latham, New York 12110, Chairman, Dr. William Streck presided.

## COUNCIL MEMBERS PRESENT:

Dr. William Streck, Chair
Dr. Howard Berliner
Dr. Jodumatt Bhat
Mr. Christopher Booth
Dr. Jo Ivey Boufford
Mr. Michael Fassler
Mr. Howard Fensterman
Dr. Carla Boutin-Foster
Mr. Robert Hurlbut
Ms. Victoria Hines
Mr. Jeffrey Kraut
Mr. Arthur Levin
Dr. Glenn Martin
Ms. Ellen Rautenberg
Ms. Susan Regan
Mr. Peter Robinson
Dr. John Rugge
Dr. Theodore Strange
Dr. Patsy Yang
Commissioner Shah (ex-officio)

## DEPARTMENT OF HEALTH STAFF PRESENT:

Mr. Charles Abel
Dr. Guthrie Birkhead
Ms. Rachel Block
Ms. Anna Colello
Mr. Richard Cook
Ms. Barbara DelCogliano
Mr. Christopher Delker
Ms. Colleen Frost
Ms. Rebecca Fuller Gray
Ms. Sandy Haff
Ms. Mary Ellen Hennessy
Ms. Karen Lipson
Mr. Robert Loftus
Mr. Keith McCarthy
Ms. Karen Madden
Ms. Elizabeth Misa
Ms. Sylvia Pirani
Ms. Linda Rush
Mr. Robert Schmidt
Ms. Lisa Thomson

## INTRODUCTION:

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

## MEETING OVERVIEW:

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

**APPROVAL OF THE MINUTES OF JUNE 7, 2012 AND AUGUST 7, 2012:**

Dr. Streck asked for a motion to approve the June 7, 2012 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Mr. Booth. The minutes were unanimously adopted. Please refer to page 4 of the attached transcript.

Dr. Streck asked for a motion to approve the minutes from the August 7, 2012 Special Full Council meeting. Dr. Berliner motioned to approve, Mr. Booth seconded the motion. The minutes of the August 7, 2012 Special PHHPC meeting were approved. Please refer to page 5 of the attached transcript.

**REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

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

Dr. Shah began his report by thanking the Council for convening for a meeting on August 7, 2012 that banned synthetic marijuana and bath salts in ways that Commissioner's orders could not do. There are now enforcement abilities that will end this scurge. Governor Cuomo in a press event described this scurge as different from cocaine and other drugs that have been sold over time, by saying that these are the drugs that are being sold over the counter and marketing them to kids as safe and legal alternatives to marijuana. This is exactly the kind of work this Council can do in an emergency. The power vested in this body really showed its strengths on Tuesday. Commissioner Shah applauded the Council members for coming together on such short notice for this important matter.

Medicaid 1115 waiver

Dr. Shah stated that on Monday, August 6, 2012, the Department submitted the 1115 Medicaid Waiver to CMS. He further reported that the Governor spoke of the ten billion dollar Medicaid 1115 amendment to a waiver that the Department of Health was planning to submit and how it would help us realize the vision of Medicaid redesign and improve on and continue the goals of health care reform nationally. Under the waiver, New York would be able to reinvest a portion of the seventeen point one billion dollars in federal savings that will be realized over the course of the next five years as a result of what Medicaid redesign has already done. Dr. Shah explained one of the Department's proposals is an expansion of primary care in New York State, improving access, addressing health disparities. There are thirteen different sections in that waiver and the entire document is available on the Department's website.

Dr. Shah noted that the Governor announced over three hundred million dollars in grants for forty New York hospitals and nursing homes from the last round of the HEAL funds, the Health Care Efficiency and Affordability Law funds. The grants will improve the quality of primary and community-based care by focusing on higher quality, patient-centered care as well as efficiency and eliminating excess bed capacity in hospitals and nursing homes.

Doctor's Across New York

Dr. Shah updated the members on the Doctors Across New York program which encourages physicians to practice in under-served areas of the state. In July, seventeen awards were announced through the program to support the workforce in ambulatory care institutions. These grants will ensure that New Yorkers continue to receive high quality care in these settings and expand training opportunities.

Public Health

Next, Dr. Shah addressed public health issues. The Department marked a national H.I.V. testing day on June 2, 2012 by urging New Yorkers to get tested for H.I.V. AIDS. New York law mandates that all New Yorkers between the ages of thirteen and sixty-four who receive hospital or primary-care services must be offered H.I.V. tests. Since this law has been implemented there has been an increase of thirteen percent in testing across the state.

Dr. Shah advised that mosquito activity has increased around the state and so far this year two hundred and seventy-one mosquito pools have tested positive for West Nile Virus. The Department is also very concerned of a far rarer viral disease spread by mosquitoes called Eastern Equine Encephalitis or Triple E which has been found in Central New York in recent years. A strong public-awareness campaign has started to inform New Yorkers about the dangers of West Nile and Triple E and offer strategies to protect individuals from exposure.

Commissioner Shah stated that there is an elevated level of pertussis, commonly known as whooping cough. In the first six months of 2012, there were more than twelve hundred reported pertussis cases which is more than were reported all of last year and more than three times the number of cases reported nationally in 2009. In June, the federal C.D.C. reported that the U.S. had forty-four percent more pertussis cases this year than last. This bacterial infection is highly contagious but it's preventable with vaccination. The Department is focusing on prevention to limit more cases and urging New Yorkers to get vaccinations.

Dr. Shah announced that the Governor has undertaken two initiatives to protect New York's most vulnerable citizens. First, the Governor has allotted three million dollars through the federal low income Home Energy Assistance Program to provide air conditioners to low income New Yorkers who cannot afford them. Heat-related illnesses such as heat stroke and heat exhaustion can cause serious health problems, especially for the elderly, infants and young children and people with respiratory ailments or chronic medical conditions. Secondly, the Governor has also signed into law legislation to protect people with special needs and disabilities. The Governor strongly believes we have an essential duty to care for our citizens who cannot care for themselves. This law is creating The Justice Center for the Protection of People With Special Needs and this is tasked with protecting the welfare of these individuals. The Justice Center will track and investigate abuse and neglect complaints from facilities and provider agencies that are operated, certified or licensed by a state agency including the Department of Health.

Dr. Shah concluded his report and asked members if they had questions.

To review Dr. Shah's full report and questions and comments please refer to pages 5 through 17 of the attached transcript.

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

## REPORT OF THE OFFICE OF HEALTH INSURANCE PROGRAMS ACTIVITIES

Ms. Misa began her report by stating that the OHIP has been working on the submission of the 1115 Waiver amendment. The waiver will reinvest ten billion dollars in M.R.T. servings over five years to implement an action plan to transform the State's health care system. The super waiver contains thirteen reform initiatives to improve quality care and lower costs in the Medicaid program. Specifically, the waiver provides funding to expand access to primary care, enhance the infrastructure of health homes, create new care models, expand resources to transform and protect safety-net providers, enhance public health hospital renovations, expand supportive housing for high cost Medicaid users, transform and prepare long-term care providers for the move to Medicaid managed care, provide capital stabilization for safety-net hospitals, increase funding to create and support New York's health care workforce, expand public health care innovations, and enhance regional health care planning activities.

Ms. Misa stated that OHIP continues to implement phase two of the M.R.T. and is in the process of implementing over one hundred projects that were enacted during phase two of the M.R.T. These projects reflect the final recommendations of the nine M.R.T. workgroups. The workgroups include health disparities, managed long-term care, behavioral health, program streamlining, basic benefit review, workforce flexibility, payment reform, affordable housing and Brooklyn Hospitals.

Lastly, Ms. Misa explained the Department continues to monitor the Medicaid global spending cap. The Department is also on track with Medicaid spending and as of the new report we are thirty-three million dollars or one point two percent below projections.

Ms. Misa concluded her report and asked members if they had questions.

To review Ms. Misa’s report and view questions, please refer to pages 18 through 23 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 on the CHHA RFA process. He stated the Department will come back to the Council in September with a proposal that will allow the consideration of the applications that have initially been denied as part of the RFA. Once the upstate reviews are complete they will be presented at the September meeting. The goal is to bring additional applications in the November, December framework that would both be recommendations for additional approvals and then to work with the Council on the next steps for the applications that have not been approved.

Mr. Cook concluded his report. Dr. Streck thanked Mr. Cook for the report. To review the full report Office of Health Systems Management and the questions and comments please refer to pages 23 through 35 of the attached transcript.

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

Dr. Streck introduced Ms. Block to give the report of the Office of Health Information Technology Transformation activities

Ms. Block began by giving a brief update on OHITT and described the New York E-Health Collaborative four broad goals. The Department continues to be committed to successful statewide implementation of the HEAL New York program and the federal health information technology program and we are making great progress in those areas. There is also a charge to create an ongoing regulatory and sustainability model to support health I.T. adoption end use for the public good and to leverage this health I.T. infrastructure to support health reform and to have greater alignment with other Department programs and systems.

Ms. Block stated that OHITT included in the Medicaid waiver a number of provisions to help reinforce and continue some of the key health information technology activities. In particular the Department has teed up the idea with C.M.S. to secure Medicaid's participation, as part of an ongoing multi-payer arrangement to create a long-term sustainability model for health information technology adoption in the future. As well as including provisions for funding for additional technical support for health homes, provisions for funding to increase primary-care connections to the statewide health information network for New York.

Ms. Block noted that the OHITT continues to work very closely with Department colleagues in public health as well in terms of building the additional functionality and partnership as well with the New York City Department of Health and Mental Hygiene.

Ms. Block advised that regulations are necessary for governing the statewide health information network. A first early draft of the regulation was discussed with the Policy Committee which was jointly convened with the New York E Health Collaborative. Mr. Levin is a co-chair and Dr. Martin serves as a member of that Committee. The draft regulation has received good comments initially through that process.

Ms. Block noted that also as part of our stakeholder consultation, two new forums have convened, a consumer forum which had its first meeting last week and a provider forum which is designed to give ongoing clinician input. Ms. Block further advised that the Department has formalized the RHIO dashboard. NYeC is now contractually obligated to progress in certain key areas that we defined as part of their contract with the State. There are two specific goals identified. One, is increasing the number of patient consents and the other is to increase the number of patient history lookups, which were two key attributes of the success of the statewide health information network and involve areas.

Ms. Block reported progress on Meaningful Use. There are over five thousand physicians who have either established their attestation for Medicaid or for Medicare and the number of hospitals that similarly are participating in one or both of those programs with more than three hundred million dollars now having gone out the door in terms of incentive payments.

Ms. Block concluded her report. To see the complete report, please refer to pages 26 through 41 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 a follow up on marijuana and bath salts, and synthetic marijuana. Shortly after the Council met on Tuesday, August 7, 2012, the Department had a conference call with the thirty-five counties and New York City; the thirty-five counties in the state that do their own environmental health services plus our State district offices that cover the other twenty-two counties. The Department then sent out a packet of information. Currently, the county health departments are going out to locations where bath salts and synthetic marijuana may be sold and actually serving the Commissioner's order on those sites and putting them on notice. That information is then fed back to the Department. The departments have been prioritizing this action. There were two rounds of this in the last year. They are going to locations where they had identified these products in the past. They're also keying off of any complaints they've received. The hotline was setup, 1-888-999-SALTS, as part of this initiative. This hotline has received about a dozen calls with complaints specific to certain locations. Those complaints are being fed to the county health departments for follow up. Interestingly, the hotline has received a number of calls from distressed parents whose kids are struggling with bath salts or synthetic marijuana; those calls have been referred to the Office of Alcoholism and Substance Abuse services for specific follow up.

Dr. Birkhead then went on to discuss three areas where Public Health work is going on in the community on a daily basis. The first is an issue of variant influenza; H3N2 strain has emerged in the mid-west in pigs. There is an influenza epizootic going on in pigs at the moment, and during the week of August 6$^{th}$, the number of human cases related to this are now up to over a hundred in Ohio and Indiana primarily. The upward curve of this outbreak is quite significant. Earlier in the week we sent out an alert to county health departments, to physicians, hospitals, and others that if they are seeing cases of influenza or suspected influenza cases, they should submit samples to the Wadsworth Lab. This variant virus apparently does not react easily with the rapid influenza A test that clinicians use in their offices, so we really need to get lab samples submitted for testing. So far, there has not been human-to-human transmission or at least much documented with this, so it may be a dead end infection. Nevertheless, there's a surveillance system in place. The Department detected a potential problem and have mobilized both the clinical end and local Public Health resources try and address it.

Dr. Birkhead when on to discuss vibrio infection. This summer we have seen up to sixteen cases of vibrio infection. Vibrio is a bacteria species that lives in shellfish; vibrio cholerae is the most well known internationally. We don't have cholera in New York at the moment; but we do have other strains; in particular, vibrio parahaemolytics which can cause pretty significant G.I. illness. Also in persons who have other chronic conditions or immune compromised, vibrio parahaemplytics can cause a severe infection up to and including death. At this time, there have been no deaths, but there have been sixteen cases. This organism has been identified in some shellfish in Long Island Sound and those beds were closed for a period of time. This is another example where through a combination of the clinical community submitting samples and the lab identifying these unusual organisms. Public Health was able to follow and identify the source. Thus we have been able to take action to stop the outbreak. Dr. Birkhead noted that we are following this situation very closely and that this is an example of routine public health in action.

Dr. Birkhead concluded by mentioning a New Hampshire case where a radiologic technologist infected with hepatitis C had resulted in an outbreak of over thirty cases of hepatitis C in a cardiac catheterization clinic. This individual was apparently diverting narcotics in the cardiac cath lab and using the narcotics and refilling the syringes and placing them back into circulation. This resulted in over thirty documented cases of hepatitis C infection. Because of the national network that exists, the Department quickly informed that this individual had worked in a New York Hospital for a period of time, three or four years ago, in a cardiac cath lab. Along with the local health department, we have worked with that hospital to identify and notify all of the patients who were in the cath lab at the time when the individual worked there. The Department is in the process of getting Hep C testing done. This is another example of public health in action where reports of disease are just the beginning point of a series of steps that involve both state and local department. These steps identify problems, remove problems, and protect public health.

To review the full report of the Office of Public Health, please refer to pages 41 through 49 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 thanked Dr. Birkhead and Ms. Pirani and their staff for their terrific support to the effort.

Dr. Boufford noted that the Ad Hoc Leadership Group, which is quite multi-sectoral and statewide geographically, that is steering the revisions of the State Health Improvement Plan which is a core part of the application of the state for voluntary accreditation. We have reviewed the prevention agenda and talked spoke in the past about lessons learned essentially from the last round.

Dr. Boufford indicated that she would like to report on three issues:

(1) Many of the localities lacked the resources and capacity to move from planning into implementation and evaluation. Therefore, we have to keep this in mind as we refine the goals for the updated prevention agenda and
think about the strategy for rollout.

(2) We have to be aware of what local health departments do and their involvement in partnerships. We also have to be aware of and
significant continuing health disparities within the goal areas selected, including access to a basic charity, even though most of our work would be prevention oriented.

(3) Finally, hopefully we will be leaving behind some kind of sustainable partnerships for population health and community health action at the local level when this process is completed.

Dr. Boufford further stated that we have proposed a set of new priorities
for the revision of the plan. These priorities emerged from a statewide consultation that occurred when the ad hoc group developed proposals. Dr. Boufford noted that our focus is going to be very much on upstream prevention in each of these area, but the issue of basic access to services especially primary program services. A set of activities have taken place. We have developed a sort of the infrastructure that we're using to move this process along so that we'll have a report in time for November consideration. There are five work group chairs, one for each of the areas. Each area is co-chaired by someone from the health department, relevant departmental area or section, and a private sector colleague, either someone from a professional association, from business, from academia or an advocacy group.

Dr. Boufford stated that the Committee is really focusing on public/ private partnership at the chairmanship level as well as broad diversity of interest represented on each of the working groups. Invitations to working groups on mental health, healthy women and chronic disease prevention have gone out. The other two group's invitations will be going out shortly.

Dr. Boufford announced that the final co-chair for the environmental group will be Susan Klitzman, who is a professor at Hunter School of Public Health. Through support from the Robert Wood Johnson Foundation, a consultant is working with the staff and support the infrastructure of this project as it rolls out. There was a competitive process and the Raven Martin firm has been selected. We will carry though the rollout in January once the working groups have finished their work and reported.

Dr. Boufford further noted that the Department has developed and refined
a template for priority action plans so that each of the working groups will have this as the outline for the report that is due from them. The consultants are preparing a guide to help the other groups work through this schematic and scenario.

Dr. Boufford went on to mention that there are a couple of specialist groups that have been formed within the Department of Health; one on metrics, another one on data. These specialty groups will be supporting each of the working groups and that the staff have prepared very extensive background papers with an evidence base on the effective interventions in each of the priority areas and these are posted on the website. We have also developed, with the help of the consultants, a site through a project mechanism which will provide a website for each of the working groups. This will facilitate the ability to communicate with one another.

Dr. Boufford continued to say that the committee will have at least one in-person meeting over the course of the summer and the other meetings will be done virtually either by televideo conferencing.

Dr. Boufford noted that there is a steering committee that will be connecting all of the co-chairs of the working groups and certain selected members of the ad hoc leadership groups. The Ad Hoc Leadership group is meeting by phone every two weeks thus affording everyone the ability to brief each other. Dr. Boufford went on to state that the groups are also going to be building on existing strategic plans to the degree they exist; for example, maternal child health and chronic disease for the State.

Dr. Boufford also stated that the Committee hopes to have the Committee drafts by the end of September. The Ad Hoc Leadership group will then review the drafts for any slight changes and present to the Health Committee in November and to the PHHPC in December. The goal is to be able to have a document that would then accompany the State's application for accreditation. This will enable us to roll it our locally in January.

Dr. Boufford further discussed the role of the Robert Wood Johnson Foundation in supporting states applying for voluntary accreditation through this new national process. Dr. Boufford explained the Foundation is very excited that New York State is one of the early larger states to voluntarily apply for accreditation and that they are providing pro bono communication support to our overall effort. Dr. Boufford also noted that representatives from the Foundation did attend the last Ad Hoc Leadership group, and hopes this will be helpful for the January rollout at the local level. We are pleased to have those resources.

Dr. Boufford concluded by mentioning that the Committee continues to work with the Health Planning Committee. A number of our Public Health Subcommittee members have been regularly attending those meetings in hopes of moving toward identifying two candidate areas in the State, maternal mortality and prison mortality. The Committee wants to position itself so that work can progress at the beginning of the new year.

To review the full report of the Office of Public Health, please refer to pages 49 through 56 of the attached transcript.

Dr. Streck thanked Dr. Boufford and moved to the next item on the agenda, Health Policy and introduced Dr. Rugge to give the report on the Activities of the Committee on Health Planning.

## HEALTH POLICY

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

Dr. Rugge provided an update on the efforts of the Health Planning Committee. The Committee met in both June and July with an effort on dealing with background information to help us achieve a shared understanding of how CON's are performing now, what health planning was like, and changes in the environment. In June, we undertook a discussion of the measures of healthcare performance and how New York is doing. The Committee discovered that in some instances New York not so well, ranking dead last when it comes to avoidable hospitalizations and cost. Curiously at the same time, there is an enormous regional variation in many areas. Upstate has low cost in terms of total healthcare experience.

Dr. Rugge stated that the Committee developed an array of regulatory tools to be available in addition to CON. After looking nationwide, it appears there is a considerable lack of clarity in terms of how important CON is or how effective it is. It does seem clear that CON really makes sense, not in isolation but as part of a mosaic of how, in this case, the State is approaching the regulatory responsibilities. The Committee task is to look at how in a changing environment we can apply CON together with other tools to effect the better outcomes we would like to see.

Dr. Rugge further stated that in July, he had a discussion with Mr. Greg Burke in an attempt to pull together the many different threads of a hyper-dynamic healthcare environment. Mr. Burke gave a masterful presentation. Mr. Burke's slides are available on the web and also from Colleen Frost. The implications were unexpected in many ways. The healthcare system may become more self regulatory than we have seen to date. Yet, if that were to be the case, it will happen during a period of time, perhaps the five years coinciding with a Medicaid megawaiver, that would indicate contradictory impulses, contradictory incentives by providers, and a chance for misuse or abuse in either direction, abuse or overuse, over-supply or undersupply. Those are issues that are a constant struggle; maybe more so as we look forward as a Council.

Dr. Rugge noted that they also heard from Health Department staff Mr. Ulberg, Mr. Roohan, and Mr. Kissinger on new modes of care and the activity the State is undertaking with regard to financing impacting quality. This was followed by a discussion led by Ms. Daratsos on the way in which the State is regulating H.M.O.s and the payors at a time when risk is being shifted from purchaser and payor to providers. Again, profound implications for how services need to be planned and regulated.

Dr. Rugge stated that that Committee plans to have discussions one by one of all the key components of CON. There will be two special day-long meetings in September and in three in October for this purpose. The Committee plans to develop core recommendations which will then be refined and distilled and clarified. The recommendations will then be presented to the Council simultaneously with Dr. Boufford in December; hopefully, for recommendation and approval.

Dr. Rugge concluded by stating that the Health Department has been enormously supportive. Dr. Rugge thanked Ms. Lipson and stated that the Committee could not do this without her enormous amount of work in pulling together material from all around the State and beyond. This enabled us to have a command of the policy environment and the real environment in pulling this together.

Dr. Streck thanked Dr. Rugge and the Committee. Please see pages 56 through 60 of the attached transcript.

## REGULATION

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

**For Emergency Adoption**

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

Mr. Hurlbut introduced Subpart 86-2 of Title 10 NYCRR for emergency adoption regarding Nursing Homes Sprinkler Systems. Mr. Loftus described the regulation. Mr. Hurlbut motioned for emergency adoption which was seconded by Mr. Fensterman. The motion to for emergency adoption carried. Please see page 60 through 64 of the attached transcript.

**For Discussion**

10-15 Amendment of Section 400.25 of Title 10 NYCRR (Nursing Quality Indicators)

Next, Mr. Hurlbut briefly discussed the Nursing Quality Indicators proposed amendment.

Mr. Hurlbut concluded his report. Please see pages 60 through 66 to review the details of the regulations.

## 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

**CON Applications**

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

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 121157 C | Northern Westchester Hospital (Westchester County) | Contingent Approval |

Mr. Kraut introduced application 121157 and motioned for approval which was seconded by Dr. Berliner. The motion to approve carried. Please refer to pages 66 and 67 of the attached transcript.

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

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 112369 C | Memorial Hospital for Cancer and Allied Diseases<br>(New York County) | Contingent Approval |

Mr. Kraut moved to application 112369 and motioned for approval, the motion was seconded by Dr. Berliner. When opened for discussion Mr. Kraut raised concerns regarding the need for facilities to join a RHIO. The motion was amended and a contingency was added relative to RHIO's. Mr. Fensterman seconded the motion. The motion with added contingency passed. Please refer to pages 67 through 72 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**

**Ambulatory Surgery Center – Construction** **Exhibit #5**

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 121208 C | Hospital for Special Surgery<br>(New York County)<br>Ms. Regan - Interest | Contingent Approval |

Mr. Kraut introduced application 121208 and motioned for approval with an additional contingency relative to RHIO's. Mr. Fensterman seconded the motion. The motion to approve passed with one member opposed and Ms. Regan's noted interest. Please refer to pages 72 through 78 of the attached transcript.

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

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

Mr. Fensterman exited the meeting room declaring a conflict on application 121432. Mr. Kraut described the application and motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with Mr. Fensterman's noted recusal and Mr. Fassler's interest. Please refer to pages 78 and 79 of the attached transcript.

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**CON Applications**

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

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 071077 C | North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing (Suffolk County) Mr. Fensterman – Recusal | Disapproval |

Mr. Fensterman remained outside the meeting room to recuse on application 071077. Mr. Kraut described the application and motioned for disapproval. Dr. Berliner seconded the motion to disapprove. Dr. Boutin-Foster inquired why this application was recommended for disapproval. Mr. Abel stated that it did not provide convincing and substantial justification for local factors. The motion to disapprove passed with Mr. Fensterman's noted recusal. Mr. Fensterman re-entered the meeting room. Please refer to pages 79 through 82 of the attached transcript.

| | | | |
|---|---|---|---|
| 2. | 112096 C | Nesconset Acquisition, LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County) Mr. Fensterman – Abstaining | Disapproval |

Mr. Kraut moved to application 112096 and motioned for disapproval which was seconded by Dr. Berliner. The motion to disapprove carried. Please refer to page 82 of the transcript.

| | | | |
|---|---|---|---|
| 3. | 071024 C | Long Beach Memorial Nursing Home, Inc. d/b/a Komanoff Center for Geriatric and Rehabilitation Medicine<br>(Nassau County)<br>Dr. Bhat – Recusal<br>Mr. Fassler - Interest | Disapproval |

Mr. Kraut described application 071024 and noted for the record that Dr. Bhat has declared a conflict and has left the room. Mr. Fassler declared an interest. The motion to disapprove carried with Dr. Bhat's noted recusal. Dr. Bhat returned to the meeting room. Please see pages 82 through 83 of the attached transcript.

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

**CON Applications**

**Residential Health Care Facilities Ventilator Beds – Construction** **Exhibit #8**

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 072112 C | Oakwood Operating Co., LLC d/b/a Affinity Skilled Living and Rehabilitation Center (Suffolk County) | Contingent Approval |

Mr. Kraut described application 072112 and motioned for approval. Dr. Berliner seconded the motion to approve. The motion carried. Please see pages 83 through 84 of the attached transcript.

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct** **Exhibit #9**

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 111142 B | Stoneleigh Avenue Pain Management ASC, LLC<br>(Putnam County) | Contingent Approval |

| | | | |
|---|---|---|---|
| 2. | 121353 E | Crystal Run Ambulatory Surgery Center of Middletown<br>(Orange County)<br>Dr. Bhat - Interest | Contingent Approval |

Mr. Kraut described application 111142 and 121353 and motioned for approval which was seconded by Dr. Berliner. Dr. Bhat declared an interest on application 121353. The motion to approve both applications carried. See pages 84 and 85 of the attached transcript.

**Diagnostic and Treatment Center – Establish/Construct** **Exhibit #10**

| | **Number** | **Applicant/Facility** | **Council Action** |
|---|---|---|---|
| 1. | 121340 E | Metro Community Health Center<br>(New York County) | Approval |

Mr. Kraut introduced application 121340 and noted for the record that all contingencies for the application have been satisfied. Mr. Kraut motioned for approval. Dr. Berliner seconded the motion. The motioned carried. Please see page 85 of the transcript.

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

| | **Number** | **Applicant/Facility** | **Council Action** |
|---|---|---|---|
| 1. | 121103 E | HRNC Operating, LLC d/b/a Highland Rehabilitation and Nursing Center<br>(Orange County) | Contingent Approval |
| | 121168 E | Oak Hollow NC Corp. d/b/a Oak Hollow Nursing Center<br>(Suffolk County) | Contingent Approval |

Mr. Kraut moved to application 121103 and 121168 and described the applications. Mr. Kraut motioned to approve the applications, Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 86 and 87 of the attached transcript.

| | **Number** | **Applicant/Facility** | **Council Action** |
|---|---|---|---|
| 1. | 121174 E | Crest Hall Corp. d/b/a Lakeview Rehabilitation and Care Center<br>(Suffolk County) | Contingent Approval |
| 2. | 121175 E | Crown Nursing Home Associates, Inc.<br>d/b/a Crown Nursing and Rehabilitation Center<br>(Kings County) | Contingent Approval |

Mr. Kraut described application 121174 and 121175 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see page 87 of the transcript.

**Restated Certificate of Incorporation** **Exhibit #12**

| Applicant | Council Action |
|---|---|
| The Methodist Homes For The Aging of the Wyoming Conference in the State of New York | Approval |

**Certificate of Dissolution** **Exhibit #13**

| Applicant | Council Action |
|---|---|
| The Falck Foundation, Inc. | Approval |
| St. Clare Manor of Lockport, N.Y. | Approval |
| St. Joseph's Manor of Olean, N.Y. | Approval |
| St. Luke Manor of Batavia. N.Y. | Approval |
| St. Mary's Manor | Approval |

Mr. Kraut motioned for consent to filing the above listed certificates. Dr. Berliner seconded the motion. The motion carried. Please see pages 87 and 88 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 #14**

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 121180 E | Gotham Health FQHC<br>(New York County)<br>Dr. Boufford – Recusal<br>Mr. Fassler – Interest<br>Dr. Martin – Interest<br>Dr. Sullivan – Recusal(not present) | Contingent Approval |

Mr. Kraut introduced application 121180. Dr. Boufford declared a conflict and exited the meeting room. Mr. Fassler and Dr. Martin declared an interest. Dr. Sullivan declared a conflict at the EPRC meeting however was not present for the Full Council meeting. Mr. Kraut motioned for approval which was seconded by Dr. Berliner. The motioned carried with Dr. Boufford's recusal and the noted interests. Please see pages 88 and 89 of the transcript.

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

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

Mr. Kraut described application 082143 and noted for the record that Mr. Booth has an interest. Mr. Kraut motioned for approval, Dr. Berliner seconded the motion. The motion to approve carries. Please see pages 89 and 90 of the attached transcript.

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

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 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 |

Mr. Kraut moved to the next application and introduced application 121135. Mr. Booth, Ms. Hines and Mr. Robinson declared a conflict and exited the meeting room. Mr. Fassler declared an interest. Mr. Kraut motioned for approval which was seconded by Dr. Berliner. The motion carried with the noted recusals and interest. Mr. Booth, Ms. Hines, and Mr. Robinson re-entered the meeting room. Please see page 90 of the transcript.

| | | | |
|---|---|---|---|
| 2. | 121182 C | McAuley-Seton Home Care Corporation<br>(Niagara County)<br>Mr. Booth - Interest | Contingent Approval |

Mr. Kraut described application 121182 and noted Mr. Booth's interest. Mr. Kraut motioned for approval, Dr. Berliner seconded the motion. The motion to approve carried. See page 91 of the attached transcript.

**HOME HEALTH AGENCY LICENSURES** **Exhibit #17**

| Number | Applicant/Facility | Council Action |
|---|---|---|
| 2141 L | Clinton County Department of Health<br>(Clinton County)<br>Mr. Booth - Interest | Contingent Approval |

Mr. Kraut described application 2141-L and motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with Mr. Booth's noted interest. Please see page 91 of the transcript.

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

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

### 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**

Mr. Kraut next moved to the Certified Home Health Agencies that were included in July 26, 2012 Committee Book B. Mr. Kraut read into the record a new contingency and condition that will be applied to certain applications. Mr. Cook spoke briefly relative to the RFA CHHA process. Members of the Council had questions relative to the language of the new contingency. The newly added contingency language was seconded by Mr. Booth. Please see pages 109 and 110 of the transcript for the language of the contingency. For the complete discussion, please refer to pages 91 through 110 of the attached transcript.

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 121210 C | HHC Health and Home Care<br>(New York County)<br>Dr. Bhat – Recusal<br>Dr. Boufford – Recusal<br>Mr. Fassler – Interest<br>Dr. Martin – Interest<br>Ms. Regan – Interest<br>Dr. Sullivan – Recusal (not present) | Contingent Approval |

Mr. Kraut noted for the record that Dr. Boufford and Dr. Bhat has declared a conflict on application 121210 and has left the meeting room. Dr. Sullivan at the EPRC meeting declared a conflict and was not present at this meeting. Mr. Fassler, Dr. Martin, and Ms. Regan have declared an interest. Mr. Kraut described the application and motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with the noted recusals and interest. Dr. Bhat and Dr. Boufford re-entered the meeting room. Please see page 110 of the attached transcript.

| | | | |
|---|---|---|---|
| | 121226 C | Nursing Sisters Home Care, Inc.<br>d/b/a Catholic Home Care<br>(Suffolk County)<br>Ms. Regan - Interest | Contingent Approval |
| | 121249 C | Visiting Nurse Services in<br>Westchester, Inc.<br>(Westchester County)<br>Ms. Regan – Interest<br>Ms. Hines – Abstaining | Contingent Approval |

| | | |
|---|---|---|
| 121212 C | Dominican Sisters Family Health Service, Inc.<br>(Westchester County)<br>Ms. Regan – Interest | Contingent Approval |
| 121243 C | United Odd Fellow and Rebekah Home LTHHCP<br>(Bronx County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest | Contingent Approval |
| 121216 C | Visiting Nurse Association of Long Island, Inc.<br>(Nassau County)<br>Ms. Regan – Interest | Contingent Approval |
| 121291 C | The Wartburg Home<br>(Westchester County)<br>Mr. Fassler – Interest<br>Ms. Regan – Interest | Approval |
| 121448 C | UPR Care Corp., Inc. d/b/a Cold Spring Hills Center for Nursing & Rehabilitation<br>(Nassau County)<br>Ms. Regan – Interest | Contingent Approval |
| 121424 C | VillageCare Long Term Home Health Care Program<br>(New York County)<br>Mr. Kraut – Interest<br>Ms. Regan – Interest | Contingent Approval |

Mr. Kraut introduced application 121226, 121249, 121212, 121243, 121216,121291, 121448, and 121424. Mr. Kraut noted for the record that that application 121291 has met all of its contingencies. Mr. Kraut motions for approval, which is seconded by Dr. Berliner with the above noted member's interests. The motion to approve carries. Please see page 111 through 113 of the attached transcript.

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

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

**NO APPLICATIONS**

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

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

**Certified Home Health Agencies – Construction** **Exhibit #19**

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 121203 C | Personal Touch Home Aides of New York Inc.<br>(Kings County)<br>Ms. Regan – Interest | Deferred |

Mr. Kraut described application 121203 and noted Ms. Regan's interest. Mr. Kraut motions for approval which was seconded by Dr. Berliner. Mr. Fensterman raised concerns regarding the applicant's financials. The motion to approve did not carry. A new motion was made by Mr. Fensterman to defer the application and to have each member of the Council receive financial statements and data to evaluate the materials, as well as to bring the application back to the EPRC. Dr. Berliner seconded the motion to defer. The motion to defer carried. Please see pages 114 through 125 of the attached transcript.

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

**NO APPLICATIONS**

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

**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 – Establish** **Exhibit #20**

| | Number | Applicant/Facility | Council Action |
|---|---|---|---|
| 1. | 121309 E | Center Light Certified Home Health Care Agency<br>(Kings County)<br>Mr. Fassler – Recusal<br>Ms. Regan – Interest | Contingent Approval |

Mr. Kraut introduced application 121309 and noted that Mr. Fassler has declared a conflict and has exited the meeting room and noted Ms. Regan's interest. Mr. Kraut motioned for approval. Dr. Rugge seconded the motion. The motion carried with Mr. Fassler's recusal. Mr. Fassler re-entered the meeting room. Please see page 126 of the attached transcript.

| | | | |
|---|---|---|---|
| 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 |

Mr. Kraut noted that Dr. Berliner declared a conflict and exited the meeting room. Mr. Fassler and Ms. Regan declared an interest. Mr. Kraut motioned for approval which was seconded by Mr. Hurlbut. The motion carried with Dr. Berliner's noted recusal. Dr. Berliner returned to the meeting room. Please see pages 126 and 127 of the transcript.

| | | | |
|---|---|---|---|
| 3. | 121252 E | Jewish Home Lifecare, 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 (Queens County) Ms. Regan – Interest | Contingent Approval |
| 6. | 121446 E | South Nassau Communities Hospital (Nassau County) 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 – Establish** **Exhibit #21**

❖

| Number | Applicant/Facility | Council Action |
|---|---|---|
| 1. 121286 E | Lott Community Home Health Care, Inc. (New York County) Ms. Regan - Interest | Contingent Approval |

Mr. Kraut moved to applications 121252, 121222, 121247, 121446, and 121286 and noted Ms. Regan's interests and motioned for approval. The motion was seconded by Dr. Berliner. The motion to approve carried with one member opposing application 121286. Please see pages 127 and 128 of the transcript.

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

**NO APPLICATIONS**

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

**NO APPLICATION**

**ADJOURNMENT:**

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

NEW YORK STATE
DEPARTMENT OF HEALTH

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PHHPC STANDING COMMITTEES

DATE: August 9, 2012

TIME: 10:13 a.m to 12:45 p.m.

LOCATION: Century House
997 New Loudon Road
Latham, New York

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DR. STRECK: Good morning everyone.

Let me welcome you to the Public Health and Health Planning Council.

I'm Dr. William Streck, Chair of the Council and have the privilege of calling this meeting to order. I would remind council members, staff in the audience that the meeting is subject to the open meeting law and is broadcast over the internet.

The webcast may be accessed through the Department of Health's website and the on-demand webcast will be available no later than seven days after the meeting for a minimum of thirty days.

We always review some basic ground rules here and meeting cap -- we have synchronized captioning. So, it's important that people not talk over one another.

The first time you speak we ask that you briefly identify yourself as a council member or D.O.H. staff. The microphones are hot. They will pick up sounds such as rustling of papers or personal conversations that were not intended to be broadcast. So take care.

There's a record of appearance form outside the room and as a reminder for our audience

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that is required by the Joint Commission on Public Ethics in accordance with the Executive Law Section 166 that you fill out this form. We appreciate your cooperation.

At today's meeting we will have under the category Department of Health Reports, we will hear from Dr. Shah.

Ms. Misa will then give her report on the activities of the Office of Health Insurance.

Mr. Cook will give an update on the Office of Health Systems Management.

Ms. Block will report the on activities of the Office of Health Information Technology.

Dr. Birkhead will give the report on the activities of the Office of Public Health.

Continuing then at about two p.m., the Public Health Services report will be given - I'm being facetious there - by -- Dr. Boufford will follow those reports with a Public Health Services report. Under the category of health policy, Dr. Rugge will give a report on the activities of Health Planning Committee and under regulation, Mr. Hulbert will give a report of the recent committee meeting and present regulations for emergency adoption and discussion.

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We will then move to the Project Review Committee recommendations and establishment actions.

Somewhere in that interim we will pause for lunch, depending on the pace of our accomplishments. I would remind all members of the Public Health, Health Planning Council that we have to fill out our conflict of interest forms and if you have not done so, please do so.

We do the Establishment and Project Review process through a batching of like applications and we will continue that process today.

So, if you would just pause for a moment and make sure that all of our conflict of interest forms are complete and I assume that is the case.

Then we will move to the next item on our agenda which is the adoption of minutes. We have two sets of minutes to adopt. The first is the adoption of June 7th, 2012 Public Health and Health Planning Committee minutes.

May I have a motion to adopt those?

Moved.

Second?

Seconded. Any discussion on those minutes?

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Hearing none, those who would approve those minutes, aye.

Any opposition? Thank you.

I then move to ask that the minutes of the meeting of August 7th, that is conducted two days ago, a special -- the Codes and Regulation Committee minutes, be approved by the full council, reflective of the discussion held by a statewide teleconference.

May I have a motion for approval of those minutes?

Moved and seconded.

Further discussion? Hearing none, those in favor, aye.

Any opposed?

Thank you.

It is now my pleasure to welcome Commissioner Shah, who will update the Council about the Department's activities since Tuesday.

COMMISSIONER SHAH: Thank you, Bill.

Well, first I want to start off by thanking this council for the important work they did Tuesday. Many of you got phone calls over the weekend asking for your participation and -- and we responded of course and were able to convene a very important

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It really came home to me at a news conference that Governor Cuomo hosted later that day in New York City. He described this scurge as different from cocaine and other drugs that have been sold over time, by saying that these are the drugs that are being sold over the counter.

Talk about insidious. And marketing them to kids as safe and legal alternatives to marijuana. Neither safe nor legal and really causing a lot of damage across the state.

So it was very important work. It's exactly the kind of work this Council can do in an emergency. The power vested in this body really showed its strengths on Tuesday. And I must applaud all of you for on short notice coming together for this important purpose. And, I think you'll see in the coming weeks and months the effects of your work and how the numbers go down as a result. So thank you.

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I'll begin my report today with an update on the Medicaid 11.15 waiver that the Department submitted to C.M.S. on Monday.

It's been a busy week for the Department. On Monday -- in June Governor Cuomo talked about a ten billion dollar Medicaid 11.15 amendment to a waiver that the Department of Health was planning to submit and how it would help us realize the vision of Medicaid redesign and improve on and continue the goals of health-care reform nationally.

Under the waiver, New York would be able to reinvest a portion of the seventeen point one billion dollars in federal savings that will be realized over the course of the next five years as a result of what Medicaid redesign has already done.

It will help us achieve the triple A better care, better population health and improve lower cost of care. We submitted the waiver on Monday and we are in ongoing conversations with C.M.S. over the next few months. Our hope is that we will have approval of this waiver this calendar year. In advance anticipation of spending the money beginning next year.

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Among our proposals are an important expansion of primary care in New York State, improving access, addressing health disparities. There's an entire section on new care models which is worth a read. There are thirteen different sections in all in that waiver and the entire document is available on the website. If you want a crystal ball in health care, to see how New York State should be delivering health care, how we should have systems of care, the waiver is probably the best document to do so.

It has the expertise of the entire state. We had extensive engagement of stakeholders, including four public forums across the state, another web survey, reports submitted by many different organizations, individual consultations with many folks and this waiver represents the best of all of that. It's breathtaking.

If you -- if you read some of the kinds of investments we propose, for example, seven hundred and fifty million dollars for supportive housing over the next few years, on top of the seventy-five million that we've already committed to in this year's budget. These are transformative. It's taking M.R.T. to another stage, another level and across the board.

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If there's -- if you have time to read a hundred and fifty-eight pages, I think this would be the next hundred fifty-eight to choose and it's available on our website.

In addition to the waiver, the Department of Health has also been busy in giving out grants r.

Over the last few months, the Governor -- our Governor has announced over three hundred million dollars in grants for forty New York hospitals and nursing homes from the last round of the HEAL funds, the Health Care Efficiency and Affordability Law funds.

These grants are important for two reasons. First, they'll improve the quality of primary and community-based care by focusing on higher quality, patient-centered care. And second, they're geared towards efficiency and eliminating excess bed capacity in hospitals and nursing homes. As such, this funding is an investment towards a more sufficient and efficient -- I'm sorry, a more sustainable and efficient long-term plan for health care. These are themes that you hear every meeting. We're making it happen in New York by real dollars backing up our efforts.

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At previous meetings I've also mentioned the Doctors Across New York program which encourages physicians to practice in under-served areas of the state. Last month I announced seventeen awards through the program to support the workforce in ambulatory care institutions.

We need to offer support for hospitals and community-based sites, if we are to train the next generation of physicians and providers delivering ambulatory care.

These grants will ensure that New Yorkers continue to receive high quality care in these settings and expand training opportunities. They will fund clinical training for nearly one thousand medical residents at forty-three locations around the state. And, grants range from about fifty thousand to two hundred fifty thousand dollars per year for three years.

Turning to public health, the Department marked a national H.I.V. testing day on June 27th by urging New Yorkers to get tested for H.I.V. AIDS.

As you know, since September 2010, New York State Law mandates that all New Yorkers between the ages of thirteen and sixty-four who receive

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hospital or primary-care services must be offered H.I.V. tests. And since that law has been implemented there have been an increase of -- by thirteen percent in testing across the state.

This increase in testing is encouraging but there's still a lot more for us to do. For example, twenty percent of New Yorkers currently living with H.I.V. or AIDS are unaware of their status, one in five. And one in three New Yorkers diagnosed with H.I.V. get their diagnosis so late that they've already progressed to AIDS.

Consider too that nearly four thousand New Yorkers are diagnosed with H.I.V. AIDS each year adding to the approximately one hundred and thirty thousand New Yorkers currently living with H.I.V. AIDS. And the outbreak of H.I.V. AIDS is far worse in African American and Latino communities.

In 2010, while Latinos only represented seventeen percent of the New York population, Latino men alone made up for nearly thirty percent of all new cases.

So, we must continue to conduct public health and community outreach, particularly in minority and at-risk populations to make sure that

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H.I.V. AIDS tests are offered and done as early as possible. You may have seen those headlines proclaiming the end of AIDS. Well, that's really a promise not a reality.

We've recently launched public outreach and prevention efforts on other public health issues as well. This summer it's been quit hot and has increased mosquito activity around the state and so far this year two hundred and seventy-one mosquito pools have tested positive for West Nile Virus.

And we're also very concerned of a far rarer viral disease spread by mosquitoes called Eastern Equine Encephalitis or Triple E which has been found in Central New York in recent years. We've begun a strong public-awareness campaign to inform New Yorkers about the dangers of West Nile and Triple E and offer strategies to protect individuals from exposure.

There's a lot of information on our website if you're concerned and especially if you're going picnicking or camping or hiking, be sure to take all these precautions.

Furthermore, we've been alarmed this year at the elevated levels of pertussis, commonly

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known as whooping cough.

In the first six months of 2012, there were more than twelve hundred reported pertussis cases and this is more than were reported all of last year and more than three times the number of cases reported nationally in 2009.

In June, the federal C.D.D. reported that the U.S. had forty-four percent more pertussis cases this year than last. This bacterial infection is highly contagious but it's preventable with vaccination. And as such we're focusing on prevention to limit more cases and urging New Yorkers to get vaccinations.

I'd like to mention two initiatives the Governor has undertaken to protect New York's most vulnerable citizens. He has allotted three million dollars through the federal low income Home Energy Assistance Program to provide air conditioners to low income New Yorkers who cannot afford them.

Heat-related illnesses such as heat stroke and heat exhaustion can cause serious health problems, especially for the elderly, infants and young children and people with respiratory ailments or chronic medical conditions.

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The New York State Home and Community Renewal Agency has also begun to implement this program and is providing delivery and installation of air conditioning units.

Funding has been allocated for all of New York's sixty-two counties to ensure the program reaches across the state and New Yorkers who are interested in this program can apply to the Home Energy Assistance program which determines the eligibility requirements.

The Governor has also signed into law legislation to protect people with special needs and disabilities. The Governor strongly believes we have an essential duty to care for our citizens who cannot care for themselves.

We've all heard those stories and read about them in The Times and elsewhere about the mistreatment of children and adults with special needs and this bill -- this bill is a major step towards strengthening our safety net to protect such individuals.

This law is creating something they are calling The Justice Center for the Protection of People With Special Needs and this is tasked with

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protecting the welfare of these individuals.

The Justice Center will track and investigate abuse and neglect complaints from facilities and provider agencies that are operated, certified or licensed by a state agency including the Department of Health.

In addition, the law will create standardized outlets and reporting mechanisms to document past abuse and help prevent future incidents. This law is overdue and good news for New Yorkers with special needs and disabilities and their families and the Department will help and do its part to put the law into action.

This concludes my report and I'm happy to take any questions. Thank you.

DR. STRECK: Thank you, Commissioner.

Are there questions, comments, for the Commissioner?

DR. BHAT: This is Dr. Bhat. I would like to hear Dr. Shah's that monies have been allocated for graduate education in primary care. The last four or five years with the closing of so many teaching hospitals in New York City area, we've probably lost maybe a thousand residency slots. How

exactly this money is going to be allocated? You said they're going to be given grants. Is it for existing programs or are we going to be starting new programs a new set up because the residency programs have to get out of the hospital and into the communities. Are you planning to do something in that area?

COMMISSIONER SHAH: Absolutely right.

So this is -- these funds that were awarded are for existing programs but exactly as you said, we're fostering the broader outreach and training of residents. We know that when a resident trains in a rural setting in primary care, they tend to stay there. They find that they can actually make a life there.

And, our problem is not training necessarily enough of the right types of physicians, it's keeping them in New York after we've trained them.

So there's a multi-pronged approach to this. One is to, as you suggested, spread the wealth to rural communities, make folks in under-served areas, both in inner cities and in rural regions, have slots where folks are being trained in primary care. So in those settings they understand the value of

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working in such settings and chose to stay.

But the second is to make sure that all folks who are trained in primary care specialties, choose New York as their options. And I personally am a recipient of a federal version of a program like this that keeps us in primary care, kept me in internal medicine by loan forgiveness. That's been one of the bigger areas where folks choose specialties because they can pay off their loans faster and they can afford to be a doctor.

New York State is building off of the federal programs that exist through the National Health Services Corp. and others and with Doctors Across New York adding to the value and creating new programs to keep not only doctors but other primary-care providers in New York State.

The website has a lot of information on this ongoing grant program and we are not yet accepting applications for the next round of it, but definitely look at it.

DR. STRECK: Other comments or questions for the Commissioner? Thank you.

Thank you, Commissioner.

Before moving on, I just want to clarify

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the process of approval of the minutes of our meeting on Tuesday and I -- my language may not have been precise, but the minutes we approved were minutes of the full council which are at your place. They were not the minutes of the Committee.

So just want the record to reflect that the minutes of the full council's actions were approved today. Thank you.

We'll now move to the Office of Health Insurance. Ms. Misa.

MS. MISA: Good morning. And thank you for the opportunity to provide an update on the Office of Health Insurance Programs.

O-HIP has been working on many initiatives since our last update. The new initiative that O-HIP has been working on in conjunction with other partners in the Health Department is the submission of our 11.15 waiver amendment, also known as the super waiver to the federal government. As the Commissioner mentioned in his remarks, the Department of Health submitted an 11.15 waiver amendment to C.M.S. on Monday.

The waiver will reinvest ten billion dollars in M.R.T. servings over five years to

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implement an action plan to transform the state's health care system. The super waiver contains thirteen reform initiatives to improve quality care and lower costs in the Medicaid program.

Specifically, the waiver provides funding to expand access to primary care, enhance the infrastructure of health homes, create new care models, expand resources to transform and protect safety-net providers, enhance public health hospital renovations, expand supportive housing for high cost Medicaid users, transform and prepare long-term care providers for the move to Medicaid managed care, provide capital stabilization for safety-net hospitals, increase funding to create and support New York's health care workforce, expand public health care innovations, and enhance regional health care planning activities.

The measure -- to measure the success of these actions the waiver also includes funding to undergo rigorous and thorough evaluation of ongoing as well as new M.R.T. initiatives.

The 11.15 waiver amendment is an exciting opportunity for New York's health care system and it will consume a majority of D.O.H. staff time

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through the end of the year.

We are operating under a very aggressive timeline and we will begin discussions with C.M.S. beginning tomorrow. We hope to finalize discussions with C.M.S. by December with an implementation date for the waiver beginning January 1.

As the Commissioner mentioned, the waiver is currently online on the M.R.T. website, if anyone is interested in the details.

In addition to the 11.15 waiver, O-HIP continues to implement phase two of the M.R.T.

O-HIP is in the process of implementing over one hundred projects that were enacted during phase two of the M.R.T. These projects reflect the final recommendations of the nine M.R.T. workgroups. The workgroups include health disparities, managed long-term care, behavioral health, program streamlining, basic benefit review, workforce flexibility, payment reform, affordable housing and Brooklyn Hospitals.

O-HIP meets biweekly to report on the progress with implementation of these initiatives and we are happy to report that we are on track with implementation of all initiatives. Our progress in

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our work plan for M.R.T. phase two will also be up on the website shortly, if anyone is interested in following the steps towards implementation.

Lastly, O-HIP continues to monitor the Medicaid global spending cap. We are also on track with Medicaid spending and as of the new report we are thirty-three million dollars or one point two percent below projections.

This concludes my report. Thank you.

DR. STRECK: Dr. Berliner.

DR. BERLINER: Will the comments of C.M.S. and New York State's response to them also be available to the public online?

MS. MISA: I'm not sure if the comments will be. I can definitely check on that. We were just starting tomorrow, but I will definitely check in my e-mail.

DR. BERLINER: Thank you.

MS. MISA: You're welcome.

DR. STRECK: Other comments or questions?

I have one, Ms. Misa. In terms of the health home initiative, is that in your purview as well or is that on a parallel track.

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MS. MISA: Well this is -- this is a new proposal that's in the 11.15 M.R.T. headed by Greg Allen and his shop and there's funding in the 11.15 waiver to enhance I.T. infrastructure and enhance the governance structure of health home and to enhance member -- member communication of health homes.

DR. STRECK: So there -- additional funding to the current proposed health home initiative would come from the waiver as well. That's what I'm trying to clarify?

MS. MISA: Yes.

DR. STRECK: Okay. Thank you.

COMMISSIONER SHAH: I'll just make a clarification too. We are happy to take supportive letters for the waiver to include with the final submission of the waiver and you should direct the letters to Kelly -- is that --?

MS. MISA: Karen Delahanty.

COMMISSIONER SHAH: Karen Delahanty in the Department of Health and if you have any trouble finding her, send them to me.

But we, you know, if your organization, group, stakeholders, anyone in the public would like to have letters submitted to C.M.S. with the final

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packet, we are already receiving some but are happy to take them with your perspectives on specific parts of it as well. You know the deeper knowledge that you bring to the table, we were limited in terns of how deep we could go in some of the descriptions. It was already a hundred and fifty pages long but feel free and I know they will take it very seriously. So, welcome those comments.

DR. STRECK: Other questions for Ms. Misa? Thank you. We'll now proceed to the Office of Health Systems Management report from Mr. Cook.

MR. COOK: Good morning. The critical issue that we're working on right now, as I'm sure will not be a surprise, is a follow up to the CHHA R.F.A., the home care R.F.A.. We will come back to this council in September with a proposal that will allow us to consider the applications that have initially been denied as part of the R.F.A..

We are looking at several specific options. One may require a regulatory change. So we may -- I don't want to surprise anyone if we have to come back and request a change in the current regulation that would allow us to consider it. We are on schedule to finish the upstate reviews within the

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next week. Once those upstate reviews are complete they will be presented at the September meeting.

We, again, will only present the ones that we've approved and we will begin discussions with the downstate applications that we have denied at this point in time, probably within the next two weeks. We want to finish the upstate reviews so that we assure that we meet all the letter of the law and reg related to the confidentiality of an R.F.A.. I think we can do that. I'm looking at my friend, Nick Stone. He's not saying anything. Once the review is complete for the upstate and so we -- we clearly have been getting a lot of calls of individuals who want to sit down with us.

We will sit down with as many as we can as quickly as we can. But our goal here would be that we would be bringing back additional applications in the November, December framework that would both be recommendations for additional approvals and then to work with this council on kind of the next steps for the applications that have not been approved.

So in other words, I think we're going to get to a point where there are going to be a significant number of applications that did not meet

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the requirements of the R.F.A., did not rise in the Department's level to a level that we felt comfortable recommending, but I think we -- as mentioned at the meeting, we very much want to continue a process that will allow us to recommend approval of new home-care agencies, but recommend them in the context of the Medicaid redesign initiatives, as well as whether or not there are unique issues relating to access.

And as we discussed at the last meeting, the issue that we're going to be challenged by is how do we balance the need to be more successful in the context of Medicaid redesign with the impact in a particular county of how many home-care agencies will be appropriate without being inefficient.

And I think long term that's really going to be our challenge is to balance that.

Short term, I feel pretty confident, as we discussed, that there are a number of applications that didn't really score at the highest level on the R.F.A., but clearly as we go back and look at some of these questions, they're worthy of bringing back to this council for a discussion. And that -- that's -- quite frankly besides spending most of the weekend on the blackberry with Colleen Frost, who I think

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everyone owes a round of applause, and Jim Daring, who has not slept since a week, but it was an extraordinary effort. So that's all. I'm happy to take questions.

DR. STRECK: Michael.

MR. FASSLER: Just a question the CHHAs. Received letters people are arguing that certain counties can't afford to have more than one applicant. How do you balance that with the fact that you want consumer choice? You know how should we deal with that as a council?

MR. COOK: I think that's one of the issues that, you know, we're challenged by right now, but I'm not sure I would agree that there can't be additional CHHAs in a county where there's only one because again I mean what we're trying to balance here is the long-term care system is going to go through a significant change. And the goal is to move the populations into a managed-care environment. If there are opportunities to realign the long-term care system within a rural area and it may cross not just one county. It may cross several counties.

Then I'm not sure we want to be limited not to be able to approve an additional CHHA for a

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particular county. I think we have to look at it in the context of what we're trying to accomplish in efficiencies under the Medicaid redesign and I think we also have to look at it in the context of how well existing CHHAs are moving in a direction that we feel comfortable will produce the efficiencies.

MR. FASSLER: Different question. Regarding the Brooklyn hospital situations. We read in the paper about one hospital hasn't paid its mortgage about to lose managed care in the fall.

Can you tell us anything new happening at this facility?

MR. COOK: I think there -- there actually is a great deal happening and as we have talked about in the past, part of -- there's a lot of negotiations behind the scenes. The most important element is we focused a great deal of effort on Brookdale and Brookdale is beginning, I believe, to stabilize itself and position itself for realignment. I think the article you're referring to talked about Wyckoff and Interfaith and I think in the context of those hospitals, we are encouraging those two hospitals, along with Brooklyn Hospital, to sit down and to continue to negotiate and try and find some

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common ground for integration. That was the recommendation of the second Berger report and we continue to encourage that.

I think we continue to watch the financial circumstances of those hospitals, but I think it's fair to say that in the context of access, the Department is clearly paying very close attention to cash flows and to the financial circumstances of those hospitals. We do not see the crisis point at this point in time, but the challenge for these hospitals, several of these hospitals, Brookdale as well as Interfaith, will be to find a way to restructure their debt, to restructure their services, so that they will have a long-term survival. And that's a very difficult thing to do and that takes very careful encouragement as well as negotiation. And that's what we're engaged in right now.

DR. STRECK: Other questions for Mr. Cook?

Dr. Rugge.

DR. RUGGE: Just going back to rural areas and the availability of CHHAs, there are some -- some rural areas which are so removed or so sparsely populated, that the availability of choice may dilute

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the availability of quality. Are there standards in place to evaluate the quality of assisted services and to measure on an ongoing basis what the impact of choice includes and do we have a threshold to what level of quality is acceptable or what drives a level of being in jeopardy.

Is that better.

I'm just saying that there are rural communities that are so sparsely populated that the assurance of choice could dilute quality in terms of critical volume for the providers of home-care services and whether there is a mechanism in place and a threshold for quality of assisted services to be able to monitor over time whether those -- those services are being compromised by the -- by the necessity of offering choice.

Reminding everyone that there is at least one county with a population of less than five thousand albeit most of those residents seemingly would be quite elderly.

So we have some real issues in terms of certain communities.

MR. COOK: I'm going to ask Becky to comment, but let me first give a kind of broad

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comment. I mean -- and this is, you know always dangerous. But in some respects when we look at the upstate counties, in particular the rural areas, I don't think there's any particular standard that we can point to right now that's going to give us the type of information or comfort that every decision is going to be the right decision. I think the challenge that we have before us and -- and John, you've clearly been involved in this for a very long time, is, you know, how do we encourage the development of quality services within these regions, across very sparsely populated areas and if you have, you know I'm speaking hypothetically. If you have a series of providers that are in individual counties and they are not working with existing networks or they are not working to integrate themselves in a way that reflects the realignment that's trying to be developed under Medicaid redesign, I think those are the policy issues that we need to bring to this council with a recommendation of why that needs to change.

I think we are extraordinarily sensitive to the challenge that we do not want to disrupt or interfere with a quality provider.

But, at the same point in time, if that

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provider is not linking themselves to be in a position for change, then we can't sit still and not try and improve that care. So, Becky, I don't know if there are specific standards that we are currently using but --?

MS. FULLER GRAY: Home health providers who are certified to participate in Medicare and Medicaid are required to submit data based on admission and discharge that is used to develop outcomes measures that measure the quality of services that are provided to individuals who receive care by their agencies. We monitor it, those reports and monitor the individual outcome measures for each of the agencies periodically and on survey.

So we do have an impression of the quality of care that is provided by the individual certified home health agencies.

DR. RUGGE: Are those quality measures reported to the FIPA?

MS. FULLER GRAY: Those quality measures are reported publicly and are available at our website they are updated quarterly on our home care website.

DR. RUGGE: It would seem in the context of an application of a new applicant, it would be

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helpful for the FIPA to know the track record of that particular applicant in other areas, but also the track record and experience of those agencies currently in place in the affected county, so the judgment could be made on the relative quality and the availability of assurances for the future.

MS. FULLER GRAY: We could certainly do that.

DR. RUGGE: That'd be helpful. Additional bit of data for us to work with.

MR. COOK: And we can certainly provide it. But again I think, you know, that issue we're going to have to balance with the redesign of the system.

So I mean we may have and we do have very good providers across the state in all the sectors of home care, but if they are not aligning themselves in a way that is consistent with quite frankly the goals that the C.O.N. reform has talked about and are not making the changes to integrate themselves, then I think those are the difficult decisions.

You know you want them to move in the right direction. If they are not and there is a

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competing provider who is, then I think that's the challenge of the department and this council.

DR. RUGGE: I just want to add that we have direct experience with five counties. Some of those counties clearly need new vendors. Others do not. I would not be allowed to comment when those applications come forward. So what we really need are some objective, dispassionate assessment of the relative performance.

DR. STRECK: Mr. Kraut.

MR. KRAUT: Let's not lose sight of the fact why we increased the number of providers or provided the opportunity. You said you have evidence that, you know, some counties that they don't. This is all about which providers are going to evolve their clinical model to reflect the new business model, which is inherent in the M.R.T. and Medicare as well. We're going to be for a substantial portion of the home-care business that's post-acute as opposed to kind of chronic long-term. These are going to be into some sort of bundled payment systems.

So, yes, you may have providers there, but if they don't appropriately change their culture, their business model, their clinical model, they will

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no longer meet the needs under a redesigned system of care and -- and, you know, we -- the measures of -- of quality and outcome are kind of -- are theoretically, and I haven't -- you know we're not there yet, are baked into the value-based payment.

So if -- if individual -- you know the whole point of the home-care increase is to let's say decrease reliance on more expensive forms of post-acute care, sub-acute or inpatient rehabilitation and move the patient safely into a home-care setting and making sure that we have agencies out there that can appropriate align because in certain communities where you may have one provider and two is too many. Well, there's a monopolistic approach to that provider that they may be in -- at least there is a choice for the networks of care, be they position groups or hospitals or other providers, have -- you instill still some competition in here that allows a negotiation to occur. So not one part of that continuum holds the rest hostage. I -- you know I don't think we fully appreciate the different models that are going to happen here.

DR. RUGGE: Jeff, I would contend that there are two levels of competition. One is

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competition among providers who are certified but there's also the competition to maintain the quality so high and access so high that there is not need for -- for a competitor coming in. I'm particular concerned about the handful counties in which there is an urban center, the kind of big rural area within the county so that -- so new competition with competitors gladly come into the county for the benefit of the urban population but will not reach out to the more remote communities. So that's -- that's the particular concern that we're seeing in some locations.

DR. STRECK: It sounds as though we'll have opportunity in Rochester to pursue this discussion. Is there more of this? I'm sorry.

MR. BOOTH: I was basically going to make John's point and also indicate that some of these counties, I mean the number of nurses that are available are only employed by the home care agencies and there really is no additional capacity and that's another layer of this that becomes more complex.

DR. STRECK: Other comments or questions on Mr. Cook's report? Hearing none, we'll move to the Office of Health Information Technology

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Ms. Block.

MS. BLOCK: Thank you. I'd like to give you a brief update on some of our recent activities. Like everybody else in D.O.H., we've been busy. Try not to screw up the technology here. The plan that we have worked on with the New York E-Health Collaborative has four broad goals which are described here.

First, obviously we're -- we continue to be committed to successful statewide implementation of the Heal New York program and the federal health information technology program and we are making great progress in those areas. We also have a charge to create an ongoing regulatory and sustainability model to support health I.T. adoption end use for the public good and to leverage this health I.T. infrastructure to support health reform and to have greater alignment with other D.O.H. programs and systems.

And I mention this because in the Medicaid waiver which was briefly described earlier we have included a number of provisions to help reinforce and continue some of the key health information technology activities which you're generally familiar

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with and many of you are directly involved in.

In particular we have teed up the idea with C.M.S. that we would like to secure Medicaid's participation, as part of an ongoing multi-payer arrangement to create a long-term sustainability model for health information technology adoption in the future.

We have included provision for funding for additional technical support for health homes as was described earlier and we have also included provisions for funding to increase primary-care connections to the statewide health information network for New York. So these are very important areas of progress in terms of not only advancing our health I.T. agenda, but also trying to leverage Medicaid resources which a number of other states are currently doing to that end.

We continue to work very closely with our colleagues in public health as well in terms of building the additional functionality and partnership as well with the New York City Department of Health and Mental Hygiene.

As far as the regulatory here is concerned you may recall, this is just the recap of

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the language that we got in legislation a couple of years ago, that we do have specific legislative authorization to create regulations governing the statewide health information network.

After the HEAL program is done we needed an ongoing mechanism to oversee these activities and we have a first early draft of regulations that we have discussed with the Policy Committee which we have jointly convened with the New York E Health Collaborative. Art Levin is a co-chair along with me of that Policy Committee and Dr. Martin is a member of that Committee and we have gotten a lot of good comments initially through that process. And we will, of course, while it is not something which is for the Council's approval, when we get to that point we will share the draft for comments with the council once we get to the point where we will have a more refined draft available.

Also as part of our stakeholder consultation, we have convened two new forums which I just wanted to briefly mention. A consumer forum which had its first meeting last week. I'm not going to read this for you, but you'll see we have a number of very ambitious objectives in terms of really

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fleshing out the consumer facing side of our health I.T. agenda, an area that needs a lot more work, but I think in the future is going to become increasingly important in the context of many of the new care models that were discussed.

And, we are progressing towards convening our provider forum which is designed to give us ongoing clinician input into everything that we do. Initially there will be a strong focus on health homes since that's one of the areas where we're really trying to build out the clinical functionality, but we will of course be looking more broadly within that. And also to make sure we have clinical input into the privacy and security issues which the Health I.T. Policy Committee is working on.

We have formalized our RHIO dashboard. I'm not going to present you with a lot of data today, but I think the important points here are twofold. One is that NICE is now contractually obligated to progress in certain key areas that we defined as part of their contract with the State. And as you see we have two specific goals that we have identified.

One, is increasing the number of patient consents and the other is to increase the number of

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patient history lookups, which were two key attributes of the success of the statewide health information network and involve areas, as you can see in the first quarter of this calendar year, we had had a significant growth in both of those areas.

Also in terms of E chart adoption, these are a couple of statistics from some national reports and as you can see, New York is approximately at the same level as the national level for both physician and hospital adoption and that may not seem like a good thing, given all the investment we've made, but in fact this is significant progress from where we were a couple of years ago and I think our HEAL New York investments we will start to see increasing numbers, particularly on a physician office, H.E.R. usage.

And finally I have been reporting at your meetings on our progress on meaningful use. As you know, we had a little bit of a slow start from the Medicaid side, but we have rapidly ramped up in terms of both the physician and hospital participation in both Medicaid and Medicare. Medicaid numbers are as of the end of June. The Medicare numbers are as of the end of May.

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And as you can see, we are now well over five thousand physicians who have either established their attestation for Medicaid or for Medicare and the number of hospitals that similarly are participating in one or both of those programs with more than three hundred million dollars now having gone out the door in terms of incentive payments.

And again this is an area where the curve in terms of increasing participation is going up very rapidly. So we've very pleased. I think I mentioned at our last meeting that we are participating in a meaningful use acceleration challenge where the federal government has established a goal with us to get ten thousand physicians in New York to meaningful use by the end of the year and we are well on track I think to achieve that goal.

That concludes by remarks and I'm happy to take any questions.

DR. STRECK: Thank you. Questions? Pardon me. Questions from the group?

Thank you very much.

We'll now move to the Office of Public Health report. Dr. Birkhead.

DR. BIRKHEAD: Thanks very much.

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I'm going to give a brief update on the follow-through on the bath salts, synthetic marijuana issue and then just touch on three public health vignettes. And the theme of my talk today I think is going to be on state and local public health activities, the state and local public health action.

We did a survey a couple of years ago, a telephone survey, and about a third of the population wasn't aware whether they had a Health Department or whether they were in receipt of any Public Health services and I hope my remarks today will sort of highlight some of the unsung activities that go on in Public Health that people may not be aware of.

So in terms of the marijuana, bath salts -- synthetic marijuana, bath salts follow up, shortly after the council met on Tuesday, we had a conference call with the thirty-five counties and New York City, the thirty-five counties in the state that do their own environmental health services plus our state district offices that cover the other twenty-two counties. And, we sent out a packet of information, so what's happening now is the county health departments are going out to locations where bath salts and synthetic marijuana may be sold and actually

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serving the Commissioner's order on those sites and putting them on notice and then feeding that information back to us.

They're prioritizing this. We've gone through two rounds of this in the last year and so they're going to locations where they had identified these products in the past. They're also keying off of any complaints they've received. The -- the hotline that was sent up, 1-888-999-SALTS, as part of this initiative on Tuesday, has received about a dozen calls with complaints specific to specific locations.

So those are being fed to the county Health Departments to follow up on. And interestingly that hotline has gotten a number of calls from distressed parents whose kids are struggling with bath salts or synthetic marijuana and those calls have been referred to the Office of Alcoholism and Substance Abuse services for -- for specific follow up with them. So there's a lot underway.

The Public Health system is really activated around this around the state to serve the order and then where we find these products, there will be compliance checks back to be sure they've been removed from the shelves.

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If not, then we will work through the process with our Bureau of Narcotics Enforcement in the State Health Department, the State Police, the Attorney General and local police to take stronger action to move ahead.

So an example of where the delivery arm of a lot of this activity is -- is our local -- local Public Health presence.

I want -- in the same vein, just touch on three quick areas. You may have seen some of these reports about these three, but where Public Health work is going on in the community on a daily basis. And the first is an issue of variant influenza, H3N2 strain has emerged in the mid-west in pigs.

Apparently there's an influenza epizootic going on in pigs at the moment and in the last week the number of human cases related to this are now up to over a hundred in Ohio and Indiana primarily. But this -- this -- the upward curve of this outbreak is -- is quite significant and in fact those emergency C.D.C. nationwide call this afternoon with state Health Departments to talk about this.

Earlier in the week we sent out an alert to county Health Departments, to physicians,

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hospitals, and others that if they are seeing cases of influenza we are early now before the influenza season gets going, but suspect influenza cases, they should submit samples into the Wadsworth Lab.

This variant virus apparently does not react easily with the rapid influenza A test that clinicians use in their offices, so we really need to get lab samples submitted for testing.

So far, I think the good news is that there has not been human-to-human transmission or at least much documented with this, so it may be a deadend infection but nevertheless this -- there's a surveillance system in place for this. We detected a potential problem and have mobilized both the clinical end and local Public Health resources to -- to try and address it.

A second quick update and again you may have seen articles about this, particularly if you're in the New York City, Long Island area, but this summer we have seen now up to sixteen cases of vibrio infection. Vibrio is a bacteria species that lives in shellfish, vibrio cholerae is the most well known internationally. We don't have cholera in New York at the moment, but we do have other strains, in

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particular vibrio parahaemolytics which can cause pretty significant G.I. illness and can also in persons who have other chronic conditions or immune compromised, can cause a severe infection up to and including death.

We've not had any deaths, but we've had sixteen cases and there has -- this organism has been identified in some shellfish in Long Island Sound and those beds were closed for a period of time. But this is another example where through a combination of the clinical community submitting samples, the lab identifying these unusual organisms and Public Health following up to identify the source, that we've been able to take action to remove the pump handle in the -- in the old term to -- to stop the outbreak.

And so we're following this situation very closely, but this is an example of routine public health in action. And, then, the final thing I just wanted to mention is people probably saw news reports of a New Hampshire case where a radiologic technologist infected with hepatitis C had resulted in an outbreak of over thirty cases of hepatitis C in a cardiac catheterization clinic and this individual was apparently diverting narcotics in -- in the cardiac

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cath lab and using -- using the narcotics and refilling the syringes and placing them back into circulation and resulted in a thirty -- over thirty documented cases now of hepatitis C infection.

Because of the national network that exists, we -- it was -- we were quickly informed that this individual had worked in a New York Hospital at a period of time, three or four years ago, in a cardiac cath lab. So we, along with the local health department have worked with that hospital to identify and send out letters to all of the patients who were in the cath lab at that time when the individual worked there, and we are in the process of getting Hep C testing done.

So, again, I think another example of public health in action where reports of disease are just the beginning point of a series of steps that involve both state and local, involve the laboratory and other -- other activities to identify problems, remove problems, protect public health.

So in the vein of some public health vignette, that's my report for today. Thanks.

MR. STRECK: Thank you, Dr. Birkhead. Questions? Comments? Dr. Martin?

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MR. MARTIN: No, I was just curious from the West Nile outbreaks at the moment where do we stand compared to history?

MR. BIRKHEAD: This is -- as the Commissioner indicated in his opening remarks, this is looking like a heavy year for West Nile. We -- another activity that many counties, particularly in the New York City area and Upstate carry out is mosquitoes surveillance. So we do weekly mosquito trapping and submit those to Wadsworth for testing.

And we began to find increased levels of West Nile, whether it's due to the -- the dry weather, which I would have thought would have depressed mosquitoes, but apparently concentrates the existing mosquitoes and birds around the sources of water and -- and leads to -- may lead to increased transmission. At least that's the speculation.

So, for whatever reason, we are seeing increased levels earlier in the season than normal. We've had several human cases, none severe so far, but we're watching very closely. And as the Commissioner indicated, in the central New York area, we have a particular zone of Eastern Equine Encephalitis. And we have had two equine cases -- two horse cases, which

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may -- and are an early warning, but we've not so far identified the virus in mosquitoes there, but watching very closely.

We have had deaths, human deaths from E.E.E. in the last three years, a single case each year in young kids. So -- so it -- it's looking like a banner year despite the dry weather.

DR. STRECK: Other questions or comments? Thank you, Gus. Now, move to Dr. Boufford with the report on the Committee on Public Health. And we have these slides at our places. Joe? Yes, we do.

DR. BOUFFORD: Yes. Thank you. Good morning. Just very briefly just to give you an update on -- on our work. And thanks to Gus Birkhead and Silvia Peroni for -- and their staff for terrific support to the effort.

We -- you will recall, and we've reported in the past to this Council, that we do have an ad hoc leadership group, which is quite multi-sectoral and statewide geographically that's sort of overall steering the revisions of the State Health Improvement Plan. And -- which is a core part of the application of the state for voluntary

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accreditation. The -- we have reviewed the prevention agenda and talked to you about lessons learned essentially from the last round.

And I think the two elements that we -- we would like to address specifically, perhaps three from the last time. One is that many of the localities when the local health departments and hospitals and other stakeholders, were -- did get together they really lacked the resources and capacity to move from planning into implementation and evaluations.

So, that's very much on our minds as we refine the goals for the updated prevention agenda and think about the strategy for rollout. I think Gus's point about the knowledge at the local level about what local health departments do and their involvement in partnerships is a really important outcome we hope to see.

And, then also very strong desire in this process to address remaining -- significant continuing health disparities in -- within the goal areas selected, including access to a basic charity, even though most of our work would be prevention oriented.

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And then, finally, hopefully leaving -- leaving behind some kind of sustainable partnerships for population health and community health action at the local level when this process is completed.

We have proposed a set of new priorities for -- for the revision of the plan, which are these, which should be familiar as well. We've presented them to you in the past and these were emerged from a statewide consultation that occurred when the ad hoc group developed as proposals and these were agreed and I think we discussed some of the minor changes that were made at that point.

As I said, our focus is going to be very much on upstream prevention in each of these area, but the issue of basic access to services and -- especially primary program services is on each and every one's mind. A set of activities have taken place. We have -- these are sort of the infrastructure that we're using to move this process along, so that we'll have a report to do in time for November consideration. And each of these very briefly, there are five work group chairs, one for each of the areas.

Each are co-chaired by someone from the

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The health department, relevant departmental area or section and a private sector colleague, either someone from a professional association, from business, from academia or an advocacy group.

So, we are really focusing on public/ private partnership at the chairmanship level as well as broad diversity of interest represented on each of the working groups. Invitations to -- the working groups on mental health, healthy women and chronic disease prevention have gone out and the other two will be going out shortly. We just got our final co-chair for the environmental group, which will be Susan Plittsman, who's a professor at -- at Hunter School of Public Health.

We have, through support from the Robert Wood Johnson Foundation, been able to bring on a consultant to work with the staff and support the infrastructure of this project as it rolls out. There was a competitive process, and the Raven Martin firm was selected. You can see the activities that they'll help with and that we'll carry though the rollout in January and preparing for that once the working groups are finished their work and reported.

The Department has developed and refined

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a -- a template for priority action plans where each of the working groups will have this as the outline for the report that is due from them and the consultants are preparing a sort of guide to help the other working groups work through this schematic and scenario.

There is -- there are a couple of specialist groups that are -- have been formed within the Department of Health staff, one on metrics, another one on data that will be in -- supporting the -- each of the working groups and the staff have prepared very extensive background papers with an evidence base on the effective interventions in each of the priority areas and those are posted on a website.

This is a sample of the website -- not the sample, but the page that's now in play. And we have developed, with the help of the consultants, identified a site through a project mechanism which will provide a website for each of the working groups to have -- to be able to communicate with one another. And all of them we hope will have at least one in-person meeting over the course of the summer and the other meetings will be done virtually either by

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televideo conferencing or just telephone conferencing.

There's a steering committee that will be keeping or connecting all of the co-chairs of the working groups and certain selected members of the ad hoc leadership group are also on that. And that group is meeting by phone every two weeks and using it as an opportunity for everyone to brief each other. And I think also as was pointed out in one of the early steering committee meetings, some of the working group work could overlap and while redundancy is useful to a point, we don't want people reinventing the wheel in their own the working groups. And -- and also we will -- they are also going to be building on existing strategic plans to the degree they exist anyway, like maternal child health and chronic disease for the state at any rate.

Let me see. I think that's it. Then this is our time table. With very rapid and effective work, we hope to have committee drafts by the end of September. The ad hoc leadership group will then review those drafts for any tweaking and then we would hope to be able to present to the Committee -- Public Health Committee in November and to the FIPIC. in December. So we're on that kind of time table with

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the goal of that being the document that then would accompany the State's application for accreditation and then we'll begin to roll it out locally in January.

We also because, you know, the Robert Wood Johnson Foundation is supporting states applying for voluntary accreditation through this new national process, and they're very excited that New York State is one of the early large states to do that, they are providing pro bono communication support to our overall effort.

And representatives from the foundation did attend the last ad hoc leadership group. And I hope that will be helpful especially in the rollout -- in the January rollout at the local level. So we're pleased to have those resources.

Two other quick points, we are continuing to work with John Rugge's Planning Committee. A number of our -- our Public Health Subcommittee members have been attending those meetings regularly. And the last item that we had said we would work on is -- is identifying two areas to move the needle on specific health issues in the State. We had initial conversation at our last

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Committee meeting in two candidate areas that we'll be sort of fleshing out and -- and thinking about in our upcoming meetings. This is not a thing to happen before the end of the calendar year, but to get in position so that we can work on it in the next months are maternal mortality and prison health. And so those -- that's my report.

MR. STRECK: Thank you. Are there questions or comments in regard to this extensive -- extensive effort? This is -- it's impressive. So we'll have the document by December?

MS. BOUFFORD: That's right.

MR. STRECK: That's impressive. Are there other comments that want to be offered here? I guess not. Okay. Thanks, John. John, you want to continue with the report on the Health Planning Committee?

MR. RUGGE: The Health Planning Committee is trying to keep up with Dr. Boufford. We've been meeting in both June and July with an effort to deal with the background information to have a shared understanding of how C.O.N.'s performing now, what health planning was like and changes in the -- in the environment.

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In June, we undertook a discussion of the measures of healthcare performance and how New York is doing, in some instances not so well, ranking dead last when it comes to avoidable hospitalizations and cost. And yet curiously at the same time, there's enormous regional variation in many areas, especially Upstate, actually, low cost in terms of -- of total healthcare experience.

We have developed an array of the regulatory tools available in addition to C.O.N. An important consideration in the -- in looking nationwide, it appears there's lots of -- lots of lack of clarity in terms of how important C.O.N. is or how effective it is. It does seem clear that C.O.N. really makes sense not in isolation and is part of a mosaic of how, in this case, the State is approaching the -- the regulatory responsibilities. And so our task really is to look at how in a -- in a changing environment, we can apply C.O.N. together with other tools to effect the -- the better outcomes we would like to see.

So moving on to July, I had a discussion leading off with Greg Burke trying to pull together the many different threads of a dynamic --

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hyperdynamic healthcare environment. Really a -- to my mind, a masterful presentation and to pulling it all together. His slides are available on the web and also from Colleen.

The implications are -- are interesting in that -- that -- it would -- he would imply that in ways, maybe unexpected ways, the healthcare system may become more self regulatory than we have seen to date.

And, yet, if it were to be the case, it'll happen during a period of time, perhaps the five years coinciding with a Medicaid megawaiver that would indicate contradictory impulses, contradictory incentives by providers and a chance for misuse or abuse in either direction abuse or overuse. Supply or -- over-supply or undersupply. And those are issues that we are -- that are a constant struggle, but maybe more so as we look forward as a -- as a council.

We also heard from Health Department staff, Jon Oberg, Pat Rohan, and Mark Kissinger on new modes of care and, the -- the activity the State is undertaking with -- with regard to financing to impact quality.

And then a discussion by Anita DeRotsos

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on the way in which the State is regulating H.M.O.s and -- and the payors at a time when risk is being shifted from purchaser and payor to providers, with, again, profound implications for how services need to be planned and regulated.

That was the easy part, at least for the Committee. Coming up are discussions one by one of all the key components of C.O.N. starting with not one, but two special day-long meetings in September. That not being good enough for October, when we will have three -- count them, three meetings. Punching through looking to develop core recommendations which then in two successive meetings will be refined and distilled and clarified, bringing to the Council simultaneously with Dr. Boufford in December recommendations for consideration and hope for approval.

I can only say in addition that the -- the Health Department has been enormous -- enormously supportive. Karen Lipson hates it when I mention her name, but we couldn't do this without an -- an enormous amount of work in pulling together material all around the State and beyond so that we have a command -- we wish we have a command of -- of the

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policy environment and the real environment in pulling that together. Thank you.

MR. STRECK: Questions for Dr. Rugge. So we should all look at our schedules for the December meeting. That would be one of the pieces of advice I would offer to book your rooms for that particular day. Other questions or comments? Hearing none, we'll move on. Mr. Hurlbut, if you would take over the report on the Codes and Regulations activities.

MR. HURLBUT: My pleasure. The Codes and Regulations Committee reviewed two regulations on July 25th. The first regarding nursing homes sprinkler systems for emergency adoption and -- and one other regulation concerning nursing quality indicators for discussion.

The nursing homes sprinkler regulation was -- first was presented for a second emergency adoption. To preface, what this really means is -- is that there are about ninety-eight nursing homes in the State of New York that are financially distressed and are barely holding on.

So, in other words, they're not eligible to go to a bank or other forms of lending because

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they're not making it. And the federal government is requiring that all nursing homes be fully sprinklered. So I think that that is sort of -- about as quick as I can adopt. Mr. Loftus, would you like to take it from here?

MR. LOFTUS: Sure, Bob. Thank you. As Bob described this regulation was brought and approved on an emergency basis on June 7th in front of the Council. It's to assist nursing homes and provide a source of confidence to lenders for those homes that are in financial need and may not be able to access credit markets.

What it does is it allows the Department to accelerate depreciation or payment to those providers that show the need and requires them to deposit in accounts the -- the amounts owed to the lenders, hopefully, encouraging lenders to provide funds for these nursing homes that must meet the mandate by August 13th, 2013.

Since this was last presented to the council, there have been a few changes to the reg. They're technical in nature for the most part and there's also one change where we had some redundancy in language that we've cleaned up. And we can go over

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those changes before and if you have any questions, obviously, we'll take questions before you vote on the -- on the continued emergency regulation.

If you turn to page one of the reg in your packet, we changed the word that was previously in there that said 'subdivision' in paragraph one to 'section'. That's just a technical change.

On page two, we eliminated the word 'each' -- eliminated the word 'such' and added 'each eligible facility'. Again, a technical change. And the rest of that paragraph there we have deleted some of wording that basically formerly said that 'other such information as may be required by the Commissioner prior to the due date of the first debt service payment related to such financing, each facility shall prepare a report'. Because that wording is already included in that paragraph in other places. And we talk about a six -- prior to sixty days prior to the debt service.

So just felt that that wording was just redundant in nature. Also on page three we have again began changed the word 'subdivision' to 'section'. And then under the regulatory impact statement, the statutory authority has been changed -- a technical

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change to it where we've removed some of the wording describing Part 86.23 or 2.41. Other than that the regulation is the same as it was voted on at the June 7th meeting. If there's any questions on -- on the wording change I'd be glad to answer any questions.

MR. HURLBUT: Great.

MR. LOFTUS: Thank you.

MR. HURLBUT: The Committee unanimously voted to recommend adoption to the full council and I so move, Mr. Chairman.

MR. STRECK: So there's a motion. May I have a second. Second. Are there questions? I have a question that is somewhat tangential, but while applauding the provision of k funds to sprinkler bankrupt nursing homes, are there activities existent in regard to the problem of the bankruptcy of the nursing homes that cannot be sprinklered? I -- I guess that would be -- I realize that's not a Code Committee question, but it seems to me one that is pertinent to the topic.

MR. HURLBUT: Well, how do I -- let's see. There are several reasons why nursing homes are not doing well. And I think it would take a very long time to explain it, but part of it is the Medicaid

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rate itself, part of it is the fact that there are changes in the nursing home business where occupancy has gone down. And some of them are either going to have to change the way they do things as they Commissioner has spoken about earlier about the whole long term care, and as Dick Cook has talked about, or they are not going to make it.

So the ones that -- this regulation doesn't really go into the ones that are really depressed, but the issue we have is it's a federal mandate that we have to do this.

So I know that the Health Department is working with each of those nursing homes that aren't doing well. And I know that Bob and others are going to make sure that the payments will be made back to the banks.

MR. STRECK: Thank you.

MR. HURLBUT: It's a complicated issue.

MR. STRECK: Other questions or comments? Hearing none, those who would vote in favor of the resolution as proposed please say aye.

FROM THE FLOOR: Aye.

MR. STRECK: Opposed? Thank you. The motion passes.

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MR. HURLBUT: The next item on the agenda was the discussion concerning the Nursing Quality indicator provision. This regulation came about as a result of the Nursing Quality -- Nursing Care Quality Protection Act, which was intended for hospitals and nursing homes to disclose data on nursing staffing indicators and also information about patient outcome indicators upon request.

The information is to be compiled and made available to the public, so that the public can make better decisions about their healthcare delivery and which entities could better serve them and their needs.

On the hospital side, the National Database of Nursing Quality Indicators was chosen. While the residential healthcare facilities will use the minimum dataset known as the M.G.S. three point o to serve as a basis of obtaining information. Most of that information is readily available and should not cause any extraordinary burden for providers.

Disclosure for both the hospital and residential healthcare facilities will include substantiated outcomes from the investigations which issue a statement of deficiencies, where there's

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evidence to support provider non-compliance with federal and state requirements. And this is really information only. And, Mr. Chairman, that concludes my report.

MR. STRECK: Are there additional questions or comments for Mr. Hurlbut in regard to the Committee's work?

Thank you.

In view of the expeditious progress we've made, we will move on now to the project review, recommendations and establishment actions and I'll turn the microphone over to Mr. Kraut as chair of that committee.

MR. KRAUT: Thank you. I'm going to report of the July 26th meeting of the Establishment and Project Review Committee.

The first application we have is 121157C, Northern Westchester Hospital, Westchester County, to construct six new operating rooms and a thirteen bed post anesthesia care unit in the existing space, O.H.S.M. and the Project Review Committee recommend approval with conditions and contingencies. And I so move.

UNIDENTIFIED FEMALE: Second.

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MR. STRECK: The motion has been made and seconded. Is there discussion on the motion as presented?

Hearing none, those in favor of the motion as presented, please say aye.

FROM THE FLOOR: Aye.

MR. STRECK: Opposed? The motion passes. Thank you.

MR. KRAUT: Application 12 -- 112369(c), Memorial Hospital for Cancer and Allied Diseases in New York County to certify and construct an ambulatory extensions clinic at 1133 York Avenue to be known as the Outpatient Surgery Center. O.H.S.N. recommended approval. Conditions and contingencies as did the Establishment Committee. And I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion has been made and seconded. Is there a discussion?

MR. KRAUS: I have a point.

DR. STRECK: Mr. Kraut? An additional point?

MR. KRAUT: Additional point. I'd like to add an additional contingency to this application in light of two pieces of information.

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You heard Ms. Block's report on the importance of meaningful use and the sharing of health data and getting more providers involved in health information exchange. Memorial Hospital -- and -- and this is something we should come back to. And the next application are the only two hospitals in New York County that did -- have not joined a Health Information Exchange.

And so, in the past, we have added contingencies to applications that have a technology component compelling that -- that activity and I -- I think time has come possibly that all applicants at this day -- stage in where we are to not participate in Health Information Exchange, the importance we're putting on that policy initiative, I just don't think is appropriate.

And I'd like to add a contingency to this project that in order for it to move forward, they must also join a Health Information Exchange.

And I would just say if we could also have a -- a report possibly at a subsequent meeting of what other licensed providers have failed to join these Health Information Exchanges, we should be aware of that periodically and make a decision as

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appropriate.

We may find it's very few or we may find it's a lot. I'm not sure. This just -- in New York County, this was brought to my attention.

And, so, I'd like to just amend the approval with an additional contingency to show evidence of an executed agreement to participate in a Health Information Exchange.

DR. STRECK: We'll consider that a motion.

Is there a second to amend the original motion?

It's been seconded to amend the original motion.

So the vote will first be on the amendment. And is there a discussion on the amendment as proposed by Mr. Kraut? Dr. Berliner?

DR. BERLINER: Jeff, I mean I -- I understand you're not the applicant and can't speak for the applicant, but do you have any sense of why they haven't joined?

MR. KRAUT: I -- I've not spoken to the applicant. I -- if -- if the applicant -- let me put it this way. If -- if there's a valid reason, I'd

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like to under -- I certainly want to know about it. I -- I -- I don't know what that is, so I -- I can't speak to it.

DR. STRECK: And, Dr. Martin, you had a comment?

DR. MARTIN: Yeah. I mean with -- with the obvious interest that I do one of these in Queens, I would ask the same question, just that the applicant may actually have a rational reason for not doing it because of the change in the market in New York City at the moment, doesn't know one -- doesn't know which one to join. Doesn't know --.

MR. KRAUT: Oh, I'm not saying which one to join.

DR. MARTIN: No, I understand. I just have no idea why they're not --

MR. KRAUT: I'm just saying join one. So it's a little hard for me to mandate something at the last minute when they haven't had an -- an opportunity --

DR. STRECK: Okay.

MR. KRAUT: -- to respond to this. Look, I'm all for it as a policy. But it just strikes me as a little odd to do it at this last second in

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this process, without having had had a more public discussion. I'd be thrilled to do it, but I'm just a little concerned about doing it right now.

DR. STRECK: Want to defer it.

MR. KRAUT: Well, I -- I -- the only other recommendation would be to defer it and I'm not sure that that's fair for this as well. So --.

DR. STRECK: So we're still discussing the amendment. Any additional comments, Dr. Rugge?

DR. RUGGE: Jeff, would it be appropriate to ask the Department to add this as a contingency to all construction proposals that come forward?

MR. KRAUT: Well, I would like to do that, but I don't think it's -- I would discuss that maybe in the Planning Committee or this -- but I think -- I think at this point in time, yes. I think that -- we should put everybody on notice that don't bother, you know.

DR. RUGGE: It's -- it's in a formal suggestion perhaps.

MR. KRAUT: Yes. It's -- it's strongly recommended.

DR. STRECK: To the amendments. Other

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comments on the amendments? Hearing none, then those in favor of the amendment as proposed by Mr. Kraut and seconded to add the contingencies please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Maybe we should vote. Those in favor, please raise your hand. Okay.

So the amendment passes. We'll now return to the original application which has been proposed and seconded. Is there further discussion on the application?

Hearing none, those in favor of the application as proposed, please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? The application is approved. Thank you?

MR. KRAUT: Application 121208C, Hospital for Special Surgery. Certify a single specialty ambulatory services census at the Hospital for Special Surgery Extension Clinic, perform renovations. An interest is declared by Ms. Regan. O.H.S.M. and the Committee recommended approval of conditions and contingencies. And I so move.

UNIDENTIFIED FEMALE: Second.

DR. STRECK: Moved and seconded.

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Discussion on this application? Hearing none, those in favor, aye.

MR. KRAUT: I -- I'd like to --.

DR. STRECK: Let's pull those ayes right back for a moment. Mr. Kraut? Yes?

MR. KRAUT: I'd like to add the same contingency to this applicant as well. This is the other hospital that's not participating.

DR. STRECK: Okay. So would you rephrase your motion as --

MR. KRAUT: I would like to amend the motion -- a motion to --

DR. STRECK: Make a motion that includes the contingency.

MR. KRAUT: -- that includes the contingency to participate in an R.H.I.O.

DR. STRECK: So the motion is approval with an -- an additional contingency. That's the single motion on the floor. Do I have a second for that single motion. Thank you, Mr. Fensterman. Is there discussion on the motion? Hearing none, those in favor? Aye?

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

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MR. KRAUT: Okay. And I get to go to the whole motion. Right?

DR. STRECK: I beg your pardon?

MR. KRAUT: Do we have -- that was the amendment you just voted --.

DR. STRECK: No, no. You just took out a --

MR. KRAUT: Okay. Fine. It's all a single motion.

DR. STRECK: There we go. You're good.

UNIDENTIFIED MALE: There's one nay.

DR. STRECK: We had a nay?

UNIDENTIFIED MALE: Yeah. I thought we were going to make a motion.

DR. STRECK: No. This was on the entire motion. So we'll put a -- record a nay. Okay. Thank you.

DR. STRECK: Application 1212 --

UNIDENTIFIED MALE: Pardon me just a moment. Mr. Robinson? I'm sorry. Yes?

MR. ROBINSON: This is just really a -- a question not -- not directed towards the specific motion, but following up on it, which is the mechanism for ongoing support of R.H.I.O.s, which we all agree

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are critical. In most instances I understand that those are coming principally from the providers, that funding.

So it could be that -- maybe this isn't even a question, it's just a statement. I think that that the issue could be fiscal, meaning that I -- I believe we pay on a per discharge basis for -- for funding of R.H.I.O. And I'm just curious as to whether that might be the -- the reason for non-participation.

MR. KRAUT: You -- you mean that Memorial is -- is -- is too poor? No, I don't think so. But I'm -- I'm not, you know, I don't want to -- I don't want to speculate what their rationales are. I -- I could imagine it, but I do know, you know, M.D. Anderson, Dana-Farber. M.D. Anderson founded its R.H.I.O. in Houston. So I -- I'd be, you know, I don't know what the rationale is. But maybe that'll be a discussion point and if the Department -- I'm sure we'll hear from the applicants.

DR. STRECK: Yeah. Other comments or questions?

UNIDENTIFIED MALE: Could I just make a brief comment, Mr. Chairman?

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DR. STRECK: Ms. Block.

MS. BLOCK: The issue of sustainability of the Statewide Health Information Network, of which the R.H.I.O.s are a very important component, is part of our work plan over the next eighteen months or so. There is at this time great variability in terms of how the R.H.I.O.s are funded. And in Upstate typically the health plans are significant funding partners, downstate the providers have been significant funding partners. We'd like to make sure that we remove barriers to participation, some of which are financial, some of which may be other, including insufficient technology capability at this time to -- to meaningfully participate.

So the overall sustainability plan that I just briefly described earlier is intended to address all of these issues and come up with a system that will serve us in the long term and also remove barriers to participation and hopefully bring about some more consistency in terms of how these issues are dealt with.

MR. KRAUT: Mr. Martin?

DR. STRECK: Thank you. Dr. Martin?

DR. MARTIN: I -- I would just say that

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in addition to sustainability that -- that R.H.I.O.s don't do a whole lot other than governance in the sense that they're not -- they get together people who are agreeing to -- to share information. There are participation agreements around that. And there are discussions about the rules about consenting, about the use of information, on who could access it, what you would do with it and the like, that aren't necessarily directly public health related. And that there are reasons why various participants have been over the years reluctant to join for one reason or another.

So, I'm saying it's not necessarily a simple question of finances when you're talking about people working together the way it's set up now, because you don't have a direct link into just the pipeline where you're sharing information with others.

You have to agree with other people geographically to do certain things with it, including such things as data mining conceivably or other things going forward.

So, I'm saying it's just not as simple as saying that everyone should be sharing information. There's an easy way to do that. Everyone's on a level

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playing field. Let's all agree. So I'm saying I don't want to cast any aspersions on anyone who has not joined at the moment. There could be some very good and rational reasons for doing it. On the other hand, from the public health perspective and -- and the like I certainly agree that this should be a goal that we have. So I said I was just reluctant to force these two people at the last minute to do this when they may have very rational reasons not to at the moment. And I know that Rachel's department and everyone else is working to make this smooth as possible going forward. I just wanted that for the record.

DR. STRECK: Thank you. Other comments? Go ahead, Mr. Kraut?

MR. KRAUT: Application 12143 -- 4323C, Greater Harlem Nursing Home Company. Mr. Fensterman has declared a conflict and is leaving the room. An interest has been declared by Mr. Fassler. The -- the Applicant is a member of a trade organization of which he is an officer. Mr. Fensterman has left. This is for renovation of an existing facility, land purchase building construction and decertification of 28 -- 25 R.H.C.F. beds and develop a thirty bed assisted living

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program. O.H.S.M. and the Committee recommended approval of conditions and contingencies.

And I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion has been moved and seconded. Is there discussion? Hearing none, those in favor, aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: Application 071077C, North Sea Associates doing business as the Hampton Center for Rehabilitation and Nursing in Suffolk County. Mr. Fensterman has declared a conflict and is out of the room. Certify a twenty-two bed ventilation dependent service by conversion of twenty-two residential facilities -- twenty-two residential health facility beds two twenty-two ventilator beds. O.H.S.M. and the Committee recommended disapproval of the application and I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion on the floor is for disapproval. The motion has been made and seconded. Is there discussion?

MS. BOUTIN-FOSTER: Can you tell us a

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little bit why?

DR. STRECK: Why?

MR. KRAUT: Why this application has been disapproved?

MS. BOUTIN-FOSTER: Yeah. Anything in --.

DR. STRECK: Yeah. Recommended disapproval.

MR. KRAUT: Charlie, I would leave that to you.

MR. COLBY: I'll call members attention to a July 19th memo that I put together referencing -- and sent to the members -- referencing this competitive batch, which was originally brought to the December PHHPC meeting for Long Island. There are four applicants that were at that time, all recommended for disapproval because the Long Island region was -- showed no need for additional vent beds. At that meeting, the -- the PHHPC requested that the Department go back and -- and review the need, numbers and methodology separately for Nassau and Suffolk, which we did. The result was that Nassau was thirty-three beds over-bedded with respect to vent beds and Suffolk was thirty-three beds under-bedded.

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As a result we -- we reached out to local hospitals and discharge planners. We reached out to the applicants to obtain additional local factors arguments that could factor into a -- our decision. And weighing all that information, we decided that a recommendation for a -- an applicant in Suffolk County made sense.

And with respect to the Suffolk County applicants, there was one applicant that did -- that gave us a convincing and substantial justification for local factors that supported its proposal. So we're making a recommendation for approval -- and the other applicants did not.

So we're making a recommendation for approval of one applicant from the batch and this one is one of the applicants that we're recommending for disapproval. Thank you.

DR. STRECK: Thank you. Are there additional questions or comments on the motion as made and seconded that is before the group? The motion is for disapproval of the application. Those in favor of the motion as presented, please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Motion carried.

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MR. KRAUT: Thank you. We could ask Mr. Fensterman to return.

Application 112096C, Nesconset Acquisition, L.L.C. doing business as Nesconset Center for Nursing and Rehabilitation in Suffolk County. This is to convert twenty residential healthcare facilities beds into ten adult and ten pediatric ventilator beds with requisite construction. O.H.S.M. and the Committee recommend disapproval. There was one member abstaining.

UNIDENTIFIED MALE: Second.

MR. KRAUT: And I so move.

DR. STRECK: The motion is for approval. Approved. Right?

MR. KRAUT: Disapproval. Disapproval.

DR. STRECK: Disapproval. Right. Disapproval and the motion has been seconded. Is there further discussion? Hearing none, those in favor of the motion for disapproval, please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: Application 071024C Long Beach Memorial Nursing Home, Inc. doing business as the Komanoff Center for Geriatric and Rehabilitative

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Dr. Bhat has declared a conflict and is leaving the room. An interest has been declared by Mr. Fassler. Dr. Bhat has left the room.

The proposal is to convert ten mixed use healthcare facility beds to ten ventilator dependent beds. O.H.S.M. and the Committee recommends disapproval and I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion is for disapproval. The motion has been seconded. Is there discussion? Hearing none, those in favor of the motion as presented, say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: Okay. We ask Dr. Bhat to return.

Application 072112C Oakwood Operating Company, L.L.C. doing business as Affinity Skilled Living and Rehabilitation Center in Suffolk County, to construct a twenty bed ventilator dependent services through conversion of twenty residential healthcare facility beds with no change in bed capacity. Approval with conditions and contingencies were

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recommended by O.H.S.M. and the Committee and I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion is for -- the motion is for approval and has been seconded. Is there further discussion? Hearing none, those in favor of the motion, please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: I'm going to batch the next two applicants -- applications for establishment of construction. This is Application 111142B, Stonleigh Avenue Pain Management A.S.C. in Putnam County, which is to establish and construct a diagnostic and treatment center certified as a single specialty free-standing ambulatory surgery center that specializes in pain management services.

An application 12135E, Crystal Run Ambulatory Surgery Center of Middletown and Orange County to transfer interest of thirty-seven new members of Crystal Run Healthcare, L.L.P. This application Dr. Bhat has an interest. Both O.H.S.M. and the Committee recommended approval with contingencies.

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UNIDENTIFIED MALE: Second.

MR. KRAUT: And conditions for the first one.

DR. STRECK: So we have a batch here with two different applications, both have been made for approval and the motion for approval of both has been seconded. Is there discussion? Hearing none, those in favor of the motion to approve both items say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: Application 12134E, Metro Community Health Center in New York County to establish as the new operator of four diagnostic and treatment centers currently operated by Cerebral Palsy Association of New York State and as a safety net. I just want to note for the record that contingency number one has now been satisfied. All the contingencies are now satisfied. So O.H.S.M. and the Committee recommended approval with conditions and any outstanding conditions or contingencies. And I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion for approval

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FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: I'm going to batch the next two applications. This is application 121103E H.R.N.C. Operating, L.L.C. doing business as the Highland Rehabilitation and Nursing Center in Orange County to establish it as the new operator of St. Theresa's Nursing and Rehabilitation Center. I'm going to recommend approval with conditions and contingencies, O.H.S.M. and the Committee. And application 121168E, Oak Hollow N.C., Corp. doing business as Oak Hollow Nursing Center in Suffolk County, which is the transfer of eighty-four percent of Dr. Jacob Dimant's share as follows: Four percent of Rose Dimant, forty percent to Elliott Dimant and forty percent to Kevin Titler. O.H.S.M. and the Committee recommended approval with contingencies. And I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: A batch motion of two applications has been proposed. There's a second. Those in favor of approval of both applications please say aye.

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FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: I'm now going to batch two more applications. This is application 12174E, Crest Hall Corporation doing business as Lakeview Rehabilitation and Care Center to transfer eighty-four percent of Dr. Jacob Dimant's shares, four percent to Rose Dimant, forty percent to Elliott Dimant and forty percent to Kevin Titler. Application 121175E, Crown Nursing Home Associates doing business as Crown Nursing Home and Rehabilitation Center in King's County. Transfer ninety percent of Dr. Joseph Dimant's shares as follows: Ten percent to Rose Dimant, forty percent to Elliott Dimant, forty percent to Kevin Titler. O.H.S.M. recommends approval with contingencies as did the Committee. And I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion is for approval. It has been seconded. Is there a discussion? Hearing none, those in favor aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: I'm going to now move the certificate of estate -- certificate of incorporation

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as a batch and certificates of dissolution. The -- we have for the Methodist Homes of the Aging for Wyoming Conference in the State of New York will change its corporate name to U.M.H. N.Y. Corp. The Committee recommends approval and the certificates of dissolution for the Faulk Foundation, St. Claire's Manor of Lockport, St. Joseph's Manor of Olean, St. Luke Manor of Batavia and St. Mary's Manor, the Committee recommends approval.

DR. STRECK: Is there a motion for approval? Second? Discussion? Hearing none. Those in favor of the motion, aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed? Thank you.

MR. KRAUT: All right. Okay. I'm now going to move category two applications. The first --

Okay. Then I'm not going to batch these three. Okay. This is going to be application 12180E Gotham Health F.Q.H.C. New York County.

Dr. Boufford has declared a conflict as did Dr. Sullivan during the initial voting. Dr. Boufford has left the room. Dr. Sullivan is not attending today's meeting. An interest has been declared by Mr. Fassler and Dr. Martin. This is to

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establish Gotham Health F.Q.H.C. as the co-operator of six diagnostic and treatment centers currently operates solely by the New York City Health and Hospital Corporation, as a safety net provider. O.H.S.M. and the Committee recommended approval with contingencies. And I so move.

UNIDENTIFIED MALE: Second.

DR. STRECK: The motion is for approval. There is a second. Is there a discussion? Hearing none, those in favor do please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Thank you. Opposed. Thank you.

Could we ask Dr. Boufford to return. Application 0182143E O.M.O.P., L.L.C. doing business as Orchard Manor Inc., in Orleans County to establish it as a new operator of Orchard Manor and transfer the entire membership interest of Nathan Stern to Mosha Shiner resulting in one hundred percent membership interest from Mr. Shiner, O.H.S.M. and the committee recommended approval with contingencies, and I so move. The motion is for approval with a second. Discussion?

Hearing none, those in favor aye.

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FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you.

MR. KRAUT: Now I'm going to move applications for certified home health agencies for establishment and construction.

Application 121135 E Genesee Regional Home Care Association doing business as Lifetime Care, Monroe County. We have a conflict declared by Mr. Booth, Ms. Hines, and Mr. Robinson, all of which are leaving the room.

An interest has been declared by Mr. Fassler.

Those individuals have left the room. We're going to transfer ownership of Yates County Certified Home Health Agency to Genesee Region Home Care Association doing business as Lifetime Care. O.H.S.M. and the committee recommends approval and I so move. Motion is for approval. There has been a second. Is there a discussion? Hearing none, those in favor aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you. You can ask them to please return.

MR. KRAUT: I'm going to Application

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121182E McAuley-Seton Home Care Corporation in Niagara County. An interest has been declared by Mr. Booth to acquire and merge Niagara County Department Nursing Divisions of Certified Home Health Agency and Long Term Home Healthcare Program. O.H.S.M. and the committee recommend approval with a contingency.

DR. STRECK: Motion -- the motion is for approval. And a second has been provided. Is there a discussion? Hearing none, those in favor of the motion please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Thank you.

MR. KRAUT: Okay. Application 2141L, which is a Home Health Agency Licensure for Clinton County Department of Health. Mr. Booth has declared an interest.

Approval with contingencies are recommended and I so move.

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

FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you.

MR. KRAUT: Okay. Now we'll go into the applications that had appeared in Book B. Now before

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I do this I'm going to read into the record a contingency and condition which we had asked to be inserted into every application. This was a long meeting. Let me just -- okay.

So this will apply to all the applicants which we are going to -- where it's appropriate, and which we're going to approve, so I don't have to repeat it consistently.

The -- the contingency that would be added into the record for these applications, is the applicant must submit a plan acceptable to the Department of Health that details how it will achieve compliance with a provision of no less than two percent charity care in accordance with all the requirements outlined in Section 763.11A subparagraph -- subline Eleven of Title 10 NYCRR.

The next condition -- the other condition that we're going to add to the application is pursuant to 10 NYCRR 762.2 it's either L or I or a One. The applicant shall implement the project that is the subject of this application within ninety 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

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Failure to implement and approve the application for the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the commissioner's approval.

That was added because there was a concern expressed by some of the committee members for applicants who added several counties that they had no intent of serving those counties, but rather just submitted it just to cover themselves, and were only interested in one or two of those five counties.

And the -- the -- the concern was, therefore, leaving other applicants from, you know, taking up need in those counties. So the concern of the -- of the committee was that we would add that as a condition that they -- if they didn't serve all the counties they agreed to serve and legally set up the offices in each of the counties, that they needed to to comply with the -- the federal regs within one year of the approval, then the approval would be withdrawn from that applicant.

So they have a year to do what they said they did -- they're going to do.

DR. STRECK: For all counties.

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MR. KRAUT: Well for the counties that they asked to be approved and they expect to open up business in.

DR. STRECK: Okay.

MR. KRAUT: So they couldn't just wait three or four years to say I'm going to get into that county or that -- that was the issue. Mr. Hulbert. I'm sorry.

MR. HULBERT: So if an applicant applied in five counties and only really wanted to deal with two, so the other three they haven't done in a year, does he -- does he -- does that applicant lose all five or just gets bounced out of the three --?

MR. KRAUT: I know what I would say but I'll leave it up to the department.

DR. STRECK: That was really my question too because if -- because if it is all five this would be a little late moment for those groups to learn that fact. Charlie.

MR. ABEL: Yeah, and I -- I'm going to have to defer to -- to Becky Gray who -- who -- oh --

MR. KRAUT: Going to have to talk a little louder.

MR. ABEL: I'm sorry. I -- I'm going to

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have to defer to Becky Gray who really was the -- the -- the crafts person for that condition. Becky.

MS. GRAY: The department would expect to see them operational in each county that they were approved to provide services to. If they applied via this R.F.A. to expand their service area into five counties that they had previously not been approved to provide services to within one year we would expect the applicant to be operational in each of those five counties that they're being approved to provide service in.

DR. STRECK: And the question is if they are not?

MS. GRAY: If they are not then I think they wouldn't have met the contingent approval and your council would have to decide what to do about it.

DR. STRECK: Well, that doesn't help though. Are they going to get bounced or not? In other words --?

MS. GRAY: Bounced by the department?

DR. STRECK: Yeah. I mean, it's -- it's sort of -- if you're putting this condition on them and they're in two counties right now and they're applying for five more and they don't do it, do they

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lose those five counties they applied for and subsequently the two counties that they're in? I mean, it just -- with all these applications going on it just sort of -- if they're not going to go into the counties that they're supposed to, it's creating a lot of angst for those counties. Mr. Fensterman.

MR. FENSTERMAN: Yeah. It seems to me that following up on what Bob said, if there -- they -- in my view should not lose what they currently have but if they submitted an application to the department for X number of counties, and it is a contingency, the contingency is a contingency in its entirety. It's not a contingency in part.

So they should lose the counties for which they made application and retain that which they currently have. That's -- that's my view, because the department shouldn't be put to the task of approving additional counties for an applicant that doesn't have any intention to fulfill the execution of that.

DR. STRECK: But -- Miss Hines.

MR. HINES: Well, I would just respectfully disagree and when we discussed this two weeks ago, I voted yes for the contingency with the understanding that if somebody applied for ten and was

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able to open seven within the -- is it a year, eighteen month period, that those seven would be retained, but they would lose the ability to open the remaining -- or remaining three.

DR. STRECK: Mr. Kraut?

MR. KRAUT: I had a -- I had a different view of it. But, you know, so if you -- well, let's be clear. If you're approved today and you have three counties, nobody's taking those away.

This -- this is -- you know, with grandfather, you know, my impression was we're grandfathering. If you applied and you said you're going to open up in five counties and you have no intention of doing that, then you shouldn't have applied.

And what we're doing IS we're putting a condition on here so if you want to rethink what you submitted, just withdraw your application. If you're not -- if you have no intention of opening up there, but you're on notice that you have to open up in -- in -- within the year in the other three -- if you have two -- serving two and you want to now serve three more, you -- you have to serve those counties. That -- that was the expectation.

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DR. STRECK: But the key question here before the group is this, Jeff. Do you lose all five counties?

MR. KRAUT: Well, I -- you don't lose what you're currently licensed --

DR .STRECK: That's the nub of the question here.

MR. KRAUT: At least my -- this is -- you can't lose what you're currently licensed for, it's only what we're giving you permission to do.

DR. STRECK: Okay. That's -- that's --.

MR. KRAUT: But it's like a C.O.N. If you don't do what you say you're going to do in the application, if I don't open up an Am/Surg center and serve -- I lose -- lose the approval.

DR. STRECK: Okay. Let's -- go down the row. Mr. Hulbert.

MR. HULBERT: That wasn't the question. I wasn't here for discussion but, what I'm asking is if -- if a -- an applicant is going into five new counties within the given year they have to have an office opened up within those five counties.

Now if they don't within a year, let's just say they're only in three counties of the, you

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know, of the five, are they going to lose the two counties that they're not in? Or are they going to lose the five counties entirely?

DR. STRECK: Well, I'm glad the committee discussed this beforehand. Miss Hines?

MR. HINES: It -- so -- so two concerns. One is we don't know the intention or if people do know intention they were unaware when they submitted their application that this would be a contingency. So all of the applicants that have been or would be approved today or have been deferred to date don't know about this.

So if they had an intent versus the -- the other question is capability. You may have applied for ten believing you could accomplish it and then, you know, the world is rapidly changing. So this is a -- this is a -- an unprecedented sort of unknown process we're going through, and I don't know that it's fair to add that contingency for all counties if they're unable to open in one.

DR. STRECK: Mr. Kraut?

MR. KRAUT: I would only say that we discussed this before the applicant's came up. Every applicant that was approved was aware of it when they

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spoke to us. No applicant spoke against it.

MR. HINES: Except that I -- I did not understand that we were talking about every single county. I -- and so I would imagine that some applicants didn't understand that as well.

MR. KRAUT: I -- I -- well, I would only say if you go back to the record, I think we were exquisitely clear and we have this on tape. You can review it, but not one applicant even asked us a question about it. So I -- I would make the point the -- and we have -- to my knowledge, we have not received one letter saying that they could not comply with it.

DR. STRECK: Dr. Berliner?

DR. BERLINER: My -- my question is -- is it goes to -- to the heart of it which is what happens to the counties they are operating in?

And -- and Rick, correct me if I'm wrong, but I think when you were discussing the approval process they -- in some cases applications were -- were approved because they were in multiple counties or reaching areas that, you know, that other places didn't reach? And so the question would then be if they were approved because they said they were

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going to be in a particular county and then they're not in that county, I mean, shouldn't the whole thing be -- be voided if you will, I mean, at -- at some point?

MR. COOK: I -- I believe we -- we had the same understanding as described by Jeff in -- in the sense that the applications that came in, less so for downstate than upstate, were -- a -- a request for either an expansion or a license and with -- in the areas designated. So we evaluated them based on that request, and so we didn't evaluate them, you know, simply based on that -- that we would approve them only in one county.

If we only approved them in one county we made that decision in the R.F.A., so that -- so in some respects, I think if we were to -- to go differently and say to these entities, you have a contingency based on the approval to operate in five counties, that -- that's the action we're taking. If we were to say to them now it's okay for you to only operate in two, then I think that goes against the basic principles of the C.O.N. Approval.

I mean, that -- that is what we approved, and the contingency, and, Becky, Linda,

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correct me if I'm wrong, I mean, that was our expectation. And if they did not want to open up in five counties, then they should not have applied for those five counties, because to do otherwise then, you know, basically if -- if we had known right now in reviewing the R.F.A.'s, that they were not capable, because remember the review criteria, organizational capability, quality assurance programs, they've identified need within those areas. If we had known that they were not going -- not going to be able to get up and running in a particular county, we might not have approved them.

Or we might have approved someone else. So I -- I don't know how we change the rules based on that because we -- we then, quite frankly, go against the principles of the R.F.A. because we might have -- we might have recommended something different.

DR. RUGGE: Just a technical question. What satisfies a contingency? Is it opening an office, seeing a set number of patients within that county, would opening an office at Mailboxes Are Us qualify as being a presence?

MS. GRAY: No. It's Becky. No.

Operational means that you're actually

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providing services to individuals in the county that reside in the county throughout the county.

DR. RUGGE: Throughout the --?

MS. GRAY: They have to demonstrate that they are providing services in the entire service area, which is defined as the entire county.

DR. RUGGE: So is it -- does that imply a -- a minimum number of patients being served to -- to represent countywide involvement?

MS. GRAY: One would expect to see a -- a number of patients served, depending on the county that they're -- some counties now as you said are relatively small, do not have a large volume of patients that are provided services to.

So it would be hard to come up with a definitive number, but I would expect to see more than one patient served.

DR. RUGGE: But like Jeff said how do you know when you see it I take it?

MR. COOK: Yes. And I think, I mean, Becky, correct me if I'm wrong. The one-year requirement is -- is exactly what's in place right now. So even though we haven't approved any CHHAs in seventeen or eighteen years, anyone who's doing

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business as a home care agency, because I believe that was the question that came up is -- was the expectation that within one year they needed to be up and running.

So I -- I -- I don't think, again, I would be very concerned if we were to go against that. You have to be -- you have to meet the criteria and conditions that we approved as part of the R.F.A. that you sent to us, because if we were to do otherwise then the principles -- we would be going against the principles of the R.F.A. And we -- we -- we clearly would have acted differently. We -- we would have looked at other applications and circumstances.

MR. HINES: I -- I understand your point. Can we -- I'd like to request that as we design the process, you know, you have noted that we'll continue to look at how we'll do an ongoing review of CHHAs that part of that process be that a year from now if there's an organization that, from a capability perspective because as you said the world is changing rapidly, I -- I would want for them to have the opportunity to come back and state their case. If they're incapable of opening, for example, in one county to speak to that and keep approval for

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the others that they were successful at.

MR. COOK: I think we would pledge to come back on, you know, a quarterly basis to let you know where things are going. Look at -- our -- the -- the intent here is kind of -- I -- I see this as a technical legal intent to comply with the principles of the R.F.A. and the C.O.N. process.

I think there's a second element here of making sure that individuals who have applied, have thought through this process and didn't try and gain a license to keep someone else out.

And we have had that circumstance in nursing home beds. We've had that circumstance in other programs. And so that's -- that's what we're trying to get at with that one year extension and say, if you've come through and been approved you can't hold this forever and then prevent us from looking at other applications that might be necessary.

DR. STRECK: This side of the room okay?

This side of the room okay?

So we have the proposed universal contingency that I think we would want to vote on first that -- and then it would be applicable to each of the applications that will follow. Okay.

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MR. KRAUT: Let me just clarify --

DR. STRECK: Okay. Pardon me.

MR. KRAUT: -- the charity care requirement is a contingency which you sat -- you know, you acknowledge and you satisfy after you opened the -- a condition or -- and the issue about the one year is a condition which you have to be operational, correct? You have to agree to it as a condition of the approval and then we look one year later.

DR. STRECK: So we have -- we are adding a condition and a contingency.

MR. KRAUT: That's correct.

DR. STRECK: One of each to each of these applications and then egalitarian manner to -- to each of these. Okay. Sue.

MS. REGAN: Question. On the two percent I -- I thought I heard you to say that we're just asking them to tell us how they're going to do it. But is there any checking up at the other side to see that they have done it before they're given their whatever it is.

MR. KRAUT: First I would say that almost all the applicants who are current here had a charity care requirement. You know, we looked at

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their, you know, their Medicaid accessibility and we looked at charity care. So I -- I don't know the answer. Somebody from the department's going to have to answer, about, you know -- what's the post approval audit.

MS. REGAN: Right. Right.

DR. STRECK: Mr. Fensterman.

MR. FENSTERMAN: In the last part of what the chairman of the establishment committee said as the condition, are you adding in that if the counties are not opened that the approval is then voided?

MR. KRAUT: That -- let me just read that line.

Failure to implement an approved application within the prescribed time shall constitute abandonment of the application by the applicant and an expiration of the commissioner's approval.

MR. HINES: So I guess my concern is how might we formalize. I know there's an intent as we develop the process for further review to allow that applicant to come back, but how might we formalize that to assure that it occurs?

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DR. STRECK: May I suggest on that point that in the approval letter would it be helpful, Charlie, to reemphasize the point that this approval letter constitutes this fact and that if they were unaware of that you want to reaffirm that that is the action that was taken by the council so they know from the start that they have the one year? Would that -- would that address your concern, Vicki?

MR. HINES: In part. I -- I think I'm -- I'm more talking about the last point that I just made about if a year later they've been able to operationalize all but one of ten counties, would they have the opportunity to come back to the department?

MR. COOK: Vicki, the -- this may sound -- I don't -- I'll just say it. My concern with us getting into now kind of formalizing process for them to come back might give an expectation that that's something they can do. I don't want to do that. I mean, they -- they submitted an application.

I think what we need to pledge to the council as well as to the applicants is if there are changes in circumstances and we need to go back and revisit, we will come back with reports to this council for a decision. But I -- I'm concerned here

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of again giving any kind of expectation other than what we have a decision on.

And if -- I think Dr. Streck's point is a really good point. In the letter that we send, if circumstances have changed and if they for some reason weren't serious about their proposal, then they should understand that we will not allow them to simply open in two counties and not pay attention to the other three that they applied for.

MR. HINES: I'm comfortable with that.

DR. STRECK: Okay. We are I believe now ready to vote for the addition of the condition and the contingency to the applications we will subsequently consider. So just for clarification could you move those again, Jeff, just for me?

MR. KRAUT: Yeah. I'd like to move that the following contingency will be added into the record of the applicants I'll mention. The applicant must submit a plan acceptable to the Department of Health that details how they'll achieve compliance with a provision of no less than two percent charity care in accordance with the requirements outlined in Title 10 -- in the relevant section of Title 10, and will add a condition pursuant to Title 10 as 762.2 L

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the applicant shall implement the project that is the subject of this application within ninety 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 recommendations 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.

DR. STRECK: There is a motion and a second. Is there further discussion on this? Hearing none those in favor of the motion as proposed please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you.

So those -- the condition and contingency now apply to those projects you will enumerate.

MR. KRAUT: I will enumerate.

DR. STRECK: Proceed.

MR. KRAUT: Application 12120C HHC Health and Home Care, New York County. We have a

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conflict declared by Dr. Bhat, Dr. Boufford, Dr. Sullivan who is not here. Dr. Bhat and Dr. Boufford are leaving the room. An interest has been declared by Mr. Fassler, Dr. Martin and Miss Regan.

Dr. Bhat has left the room with Dr. Boufford. O.H.S.M. and the committee recommended approval. The committee recommended approval with the added condition and contingency as previously approved. And I so move.

DR. STRECK: We have a motion and a second. Is there a discussion on the application? Hearing none those in favor aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you. Could you ask Dr. Bhat and Dr. Boufford to come back? So that was just with the added condition you said, okay on the previous.

MR. KRAUT: I'm going to batch the next eight applications because we have no conflicts here and there were no issues discussed.

Application 121226C Nursing Sisters Home Care Inc., doing business as Catholic Home Care in Suffolk County. And interest declared by Miss Regan.

121249 C Visiting Nurse Services in

8-09-2012 - Latham, New York - Standing Comm. Westchester. Interest declared by Miss Regan, Miss Hines abstained from voting. O.H.S.M. recommended disapproval as proposed and contingent approval is being amended by the department to serve the Bronx County with a contingency recommended and the added of condition.

The committee recommended disapproval as proposed. Contingent approval was amended by the department to serve the Bronx County with contingency. And add condition was recommended with one member abstaining.

121212C Dominican Sisters Family Health Services. An interest declared by Miss Regan. This is in Westchester. The O.H.S.M. and the committee recommended disapproval as proposed but contingent approval as amended by the department to serve Kings, Nassau, New York, Queens and Richmond counties with a contingency and an added condition recommended.

121243C United Odd Fellow and Rebekah Home LTHHCP of Bronx County interest declared by Miss Regan and Mr. Fassler. Approval by O.H.S.M.. Approval by the committee with the added condition.

Application 121216 C Visiting Nurse Association of Long Island and Nassau County.

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Interest declared by Miss Regan. O.H.S.M. approval. The committee approval with added condition.

121291C the Wartburg Home in Westchester County. An interest declared by Mr. Fassler and Miss Regan. Contingency Number One has been satisfied. All the contingencies have now been satisfied for this applicant. O.H.S.M. recommended approval and the committee recommended approval with the added condition.

UPR Care Corp, Inc., doing business as Cold Spring Hills Center for Nursing and Rehabilitation in Nassau County. Interest declared by Miss Regan. O.H.S.M. recommended approval with contingency as did the committee at -- including the added condition which was recommended.

Application 121424C Village Care Long Term Home Health Care Program in New York County. An interest declared by Mr. Kraut and Miss Regan. O.H.S.M. recommended approval as did the committee with the added contingency and condition and I so move.

DR. STRECK: So we have these -- this batched group. A motion and a second on the floor. Is there discussion on any of the applicants? Hearing

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none, those favor of all those proposed please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you.

MR. KRAUT: Application 121203C Personal Touch Home Aides of New York Inc., Kings County. An interest was declared by Miss Regan and Mr. Fassler. Miss Hines and Dr. Martin abstained from voting on this application. O.H.S.M. recommended approval with contingencies. The committee recommended approval with a contingency and have added condition. There was an issue on this application -- well, I so move.

MS. FOSTER: Second.

DR. STRECK: There's a motion and a second. Is there a discussion on this application? Mr. Fassler?

MR. KRAUT: Well, let me just make the point. There was an issue on this application regarding the financial condition of the applicant with negative equity and working capital, working -- not working capitals, negative equity or negative assets. You should have received a letter from Mr. Abel to that point. There was a question that was raised that we would discuss at today's committee, so

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Mr. Abel will.

DR. STRECK: Okay. Mr. Abel and then Mr. Fensterman.

MR. ABEL: We -- as a result of the -- the concerns expressed at the committee meeting I -- we worked on a memo -- the August 7th memo laying out our -- an overview of the financial position of the applicant detail well beyond what we had in our -- in our exhibit. Although all of the conditions that we reviewed and that were detailed in the memo certainly were part of our financial review prior to bringing it to council and I'll be glad to address any questions that any committee members may have after that -- after taking into consideration that memo. Thank you.

DR. STRECK: Thank you. Mr. Fensterman.

MR. FENSTERMAN: Yes, Mr. Chairman. My problem with this application is my intention to make a motion to defer the application. This basis of my position is as follows, and I think that Mr. Abel wrote a -- a very good memo on it. My concern is that we have an entity here that is in both negative working capital and in negative stockholder equity. So it has two -- if there was an Article 28 application we wouldn't even be talking about it

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because of those two factors.

So my concern is -- is that I would like to see, and I know that the department reviewed the financial information, but this goes along with one of the concerns that we've raised at establishment and the vice chairman of the establishment committee, Mr. Booth raised and I know that Mr. Cook was kind enough to address in our establishment meeting, which is the amount of data that is available to us first in establishment and then as a committee, the full council as a whole.

In this particular instance, I would like to see the full financial statements that have been submitted because in my view this application has a blemish and I'm certain that given the sensitivity of the entire application process, all the discussions that we've had, that in all likelihood the overwhelming majority of the applications that were denied slashed deferred probably were from applicants who were not in negative equity or negative stockholder equity. They were in positive.

We have an application here with some negatives, so while I am not urging the denial of the application, I would like the opportunity that this be

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deferred to establishment. I would like the financial statements in their entirety and any other financial information that any member of the establishment committee or the council as a whole would like to review be provided to us well in advance of the meeting so that we have the opportunity to review it, digest it and analyze it,

and thereupon ask the applicant questions with regard to the fact -- with regard to what these issues are, because in my judgment this is a blemish on the application.

And, we don't have that full financial information and one of the things that this goes to the overall issue that we've addressed is the amount of data that's provided to us.

And I understand it has to really be done on a case-by-case basis. So if we -- I think Deputy Commissioner Cook indicated the establishment committee and I agree with him that we're in danger of being given too much information, and then when an issue arises we may not have enough information. So that's why it really has to be on a case-by-case basis.

But I think that when a member of the

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establishment committee in that process which is the only time when we get to ask the applicant questions, has an issue, the data has to be available to analyze relative to that issue. And we didn't have the data and we -- we don't have it now to -- but we have a -- a consolidated statement and a balance sheet, but we don't have the full financials.

And given that, Mr. Chairman, my view is this. That this application should be deferred and they should have that information to all of us and we should digest it. And on the overall issue, it goes to the issue of the data that is being given to us, so that we're informed before we make these decisions. Thank you.

DR. STRECK: Thank you, Mr. Fensterman. Mr. Kraut has to read something in the record and then we'll --?

MR. KRAUT: I'm sorry. I -- I just -- I failed in -- we'll put this in the category of obvious. In addition to the interest declared by Miss Regan, Mr. -- Ms. Regan and Mr. Fassler and abstention by Miss Hines and Dr. Martin we -- Mr. Fensterman opposed the application. So I just had to write that --.

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DR. STRECK: Okay. So that -- that takes care of the record keeping. Now we return to the point just in terms of Roberts Rules here. We have a motion on the floor for approval. We have introduced into discussion by Mr. Fensterman the concept of deferral, so to go through this process we will discuss the motion and if the -- and then if -- if the motion is acted upon one way or another, deferral may be considered. Mr. Booth.

MR. BOOTH: My question would be to Rick. Is -- is there any real implication to the R.F.A. process if we just defer this for -- until September and have the applicant come forward to answer questions?

MR. COOK: No. We -- we could defer it to September if that's the request of the council.

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

DR. BERLINER: Is there a reason why the negative equity criteria isn't part of Article 37 and I guess following up on that, should it be?

MR. FENSTERMAN: Thirty-six.

DR. BERLINER: Thirty-six. Sorry. Thank you.

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DR. STRECK: I don't know to whom we can address that question.

MS. GRAY: I wasn't there when they wrote it. I don't know. I don't know the answer to that question.

MR. LEVIN: So if somebody -- if somebody was asked for more information when -- knowing the data was available I -- I think this is a matter of principle, that if a member or members request data to better -- make a better judgment on the -- on their final decision, I think they should have that opportunity. And particularly when there's no consequence -- meaningful consequence in delaying to the next session.

We -- we want to be data driven. We're trying to move the healthcare system in that direction so I think it's really, for me, a matter of principle.

MR. BOOTH: Just add my support to that so I assume we have to vote on the motion that's on the floor first and then we can --

DR. STRECK: Right.

MR. BOOTH: -- take another motion, right?

DR. STRECK: I -- I believe the way to

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do this is to -- the motion is for approval. So if the motion for approval does not pass, that does not constitute disapproval. It just means the motion did not pass at which time if it is the preference of the group, a motion for deferral could be entered.

So everybody clear on the approach here?

And with that there is a motion for approval from the committee that has been seconded. Those in favor of the motion as initially presented please say aye.

That motion does not pass. Is there another motion? Mr. Fensterman?

MR. FENSTERMAN: Yes, Mr. Chairman. I make a motion to defer the application to the establishment committee subject to the department providing each member of the council not merely just the establishment committee but each member of the Council, the financial statements of the applicant as well as any other data any member may require in evaluating their judgment.

MS. FOSTER: Second.

DR. STRECK: There is a motion and a second to defer this. Is there discussion on the motion? Mr. Kraut.

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MR. KRAUT: There -- there have -- I mean, I hear it. It's the last phrase that gave me a little pause for thought is any other information. There has to be some materiality and some reason --.

MR. FENSTERMAN: I'll say financial information. I'll amend it to financial information.

MR. KRAUT: But, you know, you -- you want cancelled checks?

MR. FENSTERMAN: No.

MR. KRAUT: Well, you know, that -- that's where I just don't want to leave it open.

MR. FENSTERMAN: I -- I --.

MR. KRAUT: I just -- not that I'm -- I just -- just to be fair to the applicant --.

MR. FENSTERMAN: The only reason I couch it that way is because I trust the judgment of the people around the table that they're not going to be unreasonable and they're only going to ask for information that is relevant to their making an informed determination.

DR. STRECK: Okay. So how about material financial information? That language --.

MR. FENSTERMAN: I'm -- I'm prepared to accept that, Mr. Chairman.

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DR. STRECK: Thank you. Okay. So we have a motion and a second to deferral -- for deferral of the application and the submission of material financial information as requested for the full council not just for the committee.

MR. FENSTERMAN: Correct, Mr. Chairman.

DR. STRECK: That is the motion. Is there a discussion on that motion? Hearing no further comments, I would ask for those who are in favor of the motion for deferral as presented to say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Proposal is deferred. Thank you.

MR. KRAUT: Okay. Application 121309E Center Light Certified Home Health Care Agency, Kings County. A conflict declared by Mr. Fassler who's leaving the room. An interest declared by Miss Regan. O.H.S.M. -- Mr. Fassler has left the room. O.H.S.M. and the committee recommend disapproval as proposed.

A contingent approval as amended by the department to serve Bronx, Kings, Nassau and New York, Queens, Richmond, Suffolk and Westchester Counties with the added contingency and added condition recommended by the committee, and I so move.

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MS. FOSTER: Second.

DR. STRECK: Would you clarify what we are giving a contingent approval or a disapproval?

MR. KRAUT: No, this isn't a -- a -- what happened is, I should have made this clearer. The -- some of the applicants applied for counties that were not part of the downstate batch. So therefore the department recommended disapproval.

So let's say if you -- you wanted to serve Westchester and Orange and Rockland, so we weren't considering Orange and Rockland. We're going to do that in September.

So, we recommended a disapproval as the applicant proposed but approval for the counties we were considering at that time. This applicant likely may return in an approval when we consider the upstate batches. And, then, we would just approve them for those two at that action. So we separated our actions based on the geographic batch we were looking at.

DR. STRECK: So what if they don't go into the counties where they were not eligible to go that you disapproved on it and made contingent? No, I'm just kidding. Okay. All right.

MR. KRAUT: Well, it's -- nothing will

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happen until we piece the two together.

DR. STRECK: Okay.

MR. KRAUT: They'll be -- probably be in one letter is my guess.

DR. STRECK: So then the motion is for contingent approval.

MR. KRAUT: Well, it's the approval with the contingency and condition we discussed. We approved -- we just -- what I'm doing is I'm covering ourselves with the language of saying that we discuss at the beginning we're adding to that.

DR. STRECK: Now are those contingencies. But I'm also -- I'm trying to get clear that the -- this is -- this is an -- a modified application.

MR. KRAUT: That's correct.

DR. STRECK: We have to be clear that the -- the -- so it's a -- a modified application for which we are providing approval?

MR. KRAUT: That's correct.

DR. STRECK: Okay. There's a motion to that effect on the floor. Did I hear a second?

MS. FOSTER: Second.

DR. STRECK: Thank you. Is there

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further discussion or any more questions about this? If not I'm --

MR. KRAUT: Certified Light, Certified Home -- I'm -- because we have -- no, no. I just said -- I just called this because we -- we have two applications with recusals and then I'll batch the rest.

DR. STRECK: Okay. So -- ready here, ready there. Those -- those in favor aye.

FROM THE FLOOR: Aye.

DR. STRECK: Thank you. Opposed. So that passes. Thank you.

MR. KRAUT: Could we ask Mr. Fassler to return to the room.

Application 121256 C Isabella Care at Home Inc., New York County. A conflict declared by Dr. Berliner who is leaving the room. An interest declared by Mr. Fassler and Miss Regan. Dr. Berliner has left the room. O.H.S.M. and the committee recommend approval with contingencies and the added condition. I so move.

DR. STRECK: A motion. Placed. A second. Mr. Hulbert. Thank you. Discussion. Hearing none those in favor aye.

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FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you.

MR. KRAUT: Ask Dr. Berliner to return please. I am now going to batch the next five, and these are the last applications we'll consider.

121252E Jewish Home Lifecare Community Services in New York County. An interest declared by Mr. Fassler and Miss Regan. O.H.S.M. and the committee similar to the one we discussed before is recommending disapproval as proposed.

A contingent approval as amended by the department to serve Bronx, King, Nassau, New York, Queens, Richmond, Suffolk and Westchester Counties with the added contingency and condition as recommended.

Application 121222E Lutheran CHHA Inc., in -- in Kings County. An interest declared by Miss Regan. O.H.S.M. and the committee recommend approval with the added contingency and condition.

Application 121247E, Queens Long Island Certified Home Health Agency, L.L.C., Queens County. Interest declared by Miss Regan. O.H.S.M. and the committee recommending approval with the added condition and contingency.

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121446E South Nassau Community Hospitals in Nassau County. Interest declared by Miss Regan. O.H.S.M. and the committee recommended approval with the added contingency and condition.

Application 121286E Lott Community Home Care Inc. Interest declared by Miss Regan. This is in New York County. O.H.S.M. and the committee recommended approval along with the added condition and contingency. There was one member opposing this application and I so move.

DR. STRECK: So the batch has been moved. We'll be voting on all applications with this motion. Those in favor of the applicants as proposed in this batch please say aye.

FROM THE FLOOR: Aye.

DR. STRECK: Opposed. Thank you.

MR. KRAUT: And that is the report of the establishment and project review committee.

DR. STRECK: Thank you for that scintillating report, Mr. Kraut. That was a -- that was a logistical challenge well managed.

MR. KRAUT: If you like that don't miss our September meeting.

DR. STRECK: Right. And where is our --

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where -- where is our September meeting?

MR. KRAUT: September will be held in beautiful Rochester in the fall. Please also we encourage you, you know, spend a weekend there and spend some money in upstate New York.

It's going to be in Rochester, September what date?

DR. STRECK: No, wait a minute. Karen's saying no.

MR. KRAUT: I'm sorry. The planning committee gets to go to Rochester. We just go to New York City again, right. Okay. What day is the next meeting?

MR. LEVIN: We -- we could actually have a council meeting in Rochester. We would love to host you.

MR. KRAUT: September 19th is planning and September 20 is the regular committee day and it's being held in New York City with a full council in October 11th. And we'll -- and another planning on October 12th.

DR. STRECK: Okay. With those clarifications is there other business to come before the council today? I thank -- I thank everyone for

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the high level of participation considering the double duty required of the council this week.

There is lunch is available for the council members in an adjacent room. Thank you. We are adjourned.

(The meeting adjourned)

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STATE OF NEW YORK
I, G. Michael France, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 130, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 14th day of August, 2012.

_____
G. Michael France, Reporter

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

# October 11, 2012

## A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121204 C | NYU Hospitals Center (New York County) | Contingent Approval |
| 2. | 121431 C | Nyack Hospital (Rockland County) | Contingent Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121119 C | NYU Hospitals Center (New York County) | Contingent Approval |
| 2. | 121468 C | Montefiore Medical Center – Henry & Lucy Moses Div (Bronx County) | Contingent Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121363 C | Sunshine Children's Home and Rehab Center (Westchester County) | Contingent Approval |

**Upstate Certified Home Health Agencies - Construction** **Exhibit #6**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121288 C | Living Resources Certified Home Health Agency, Inc. (Albany County) | Contingent Approval |

# Public Health and Health Planning Council

## Project # 121204-C

## NYU Hospitals Center

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

***Program:*** **Acute Care Services**
***Submitted:*** **April 12, 2012**

## Executive Summary

### Description

NYU Hospitals Center (NYU), an 879-bed not-for-profit hospital located in Manhattan, requests approval to construct a new clinical pavilion – the Helen L.. and Martin S. Kimmel Pavilion. NYU is not adding any net new beds or services with this application, but is re-tooling and enhancing the hospital by building this 830,200 SF facility. This proposed project is based on the hospital enhancing services by:

- Coordinating patient care through the use of electronic medical records;
- Reducing length-of-stay over time;
- Improving inpatient bed capacity management;
- Providing weekend elective surgery;
- Decreasing admissions for preventable conditions, and
- Improving cost structure and staffing efficiencies.

As part of its transformation plan, NYU will focus on providing more community-based care to prevent illness and hospitalizations, and on improving quality of care. NYU projects market share to remain constant during this period.

The transformation plan includes demolishing the Rusk Institute Building, the Perelman Building and North Service Wing to make way for the new Kimmel Pavilion. Renovating the current buildings would be inefficient, and more costly than building a replacement facility.

Total project costs are estimated at $1,232,353,281.

### DOH Recommendation

Contingent approval.

### Need Summary

The Kimmel Pavilion will address many of the limitations of the existing hospital, and provide enhanced support systems for the existing facility, as well as meet the future needs of the Hospital Center's patients. NYU's bed complement is as follows:

| Bed Category | Capacity | Proposed | Upon Completion |
|---|---|---|---|
| Medical/Surgical | 443 | - 34 | 409 |
| Coronary Care | 6 | - 6 | 0 |
| Intensive Care | 37 | 124 | 161 |
| Bone Marrow Transplant | 6 | | 6 |
| Physical Medical and Rehabilitation* (PM&R) | 174 | - 22 | 152 |
| Maternity | 36 | | 36 |
| Neonatal Intensive Care | 7 | | 7 |
| Neonatal Intermediate Care | 18 | | 18 |
| Pediatric | 39 | - 5 | 34 |
| Pediatric ICU | 9 | 25 | 34 |
| Psychiatric | 22 | | 22 |
| Special Use | 82 | - 82 | 0 |
| *Total* | *879* | *0* | *879* |

** The decrease in PM&R beds resulted from Administrative CON #102362-C, which relocated those beds to the Rusk Institute.*

### Program Summary

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

### Financial Summary

Project costs will be met via equity of $758,083,393 and $474,269,888 in tax-exempt bonds.

| | | |
|---|---|---|
| Incremental Budget: | *Revenues:* | *$209,464,293* |
| | *Expenses:* | *236,412,073* |
| | *Gain/(Loss):* | *($26,947,780)* |

The incremental loss is due to a large capital expense, but can be absorbed through operations.

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 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 board resolution for a Medicaid hold-harmless agreement that is acceptable to the Department of Health. [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. This project is approved to be initially funded with NYU Hospital variable line of credit financing and equity with the prospect that the project will be permanently financed. The interest rate is projected at 5.88% financed as part of a future NYU tax-exempt bond financing through The Dormitory Authority for a term of 30 years. The financing will be structured in tranches, which will replenish the variable rate credit line to avoid excessive interest charges, and negative arbitrage costs. Financing is conditioned upon the Department having the opportunity to review the final financing proposed in advance to ensure that it meets approval standards. [BFA]
2. 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

**October 11, 2012.**

# Need Analysis

## Background

NYU Hospitals Center (NYU) is an 879-bed acute care hospital located at 550 First Avenue New York, 10016, in New York County. The facility seeks CON approval to construct a new clinical pavilion and rearrange its inpatient beds to meet the needs of its patients. The new pavilion will be called the Helen L. and Martin S. Kimmel Pavilion (Kimmel Pavilion). When this project is completed, there will be no net new beds added to the facility's certified capacity.

NYU Hospitals Center has the following certified beds and services:

**Table 1:**
**NYU Hospitals Center-Tisch: Certified Bed Capacity by Service**

| *Bed Category* | *Capacity* | *Proposed* | *Upon Completion* |
|---|---|---|---|
| Medical-Surgical | 443 | - 34 | 409 |
| Coronary Care | 6 | - 6 | 0 |
| Intensive Care | 37 | 124 | 161 |
| Bone Marrow | 6 | | 6 |
| Physical Medical & Rehabilitation | 174 | - 22 | 152 |
| Maternity | 36 | | 36 |
| Neonatal Intensive Care | 7 | | 7 |
| Neonatal Intermediate Care | 18 | | 18 |
| Pediatric | 39 | - 5 | 34 |
| Pediatric Intensive Care Unit | 9 | 25 | 34 |
| Psychiatric | 22 | | 22 |
| Special Use | 82 | - 82 | 0 |
| *Total* | *879* | *0* | *879* |

**Table 2:**
**New York University Hospitals Center: Certified Services**

| | |
|---|---|
| Ambulatory Surgery - Multi Specialty | Audiology O/P |
| CT Scanner | Cardiac Catheterization - Adult Diagnostic |
| Cardiac Catheterization - Electrophysiology (EP) | Cardiac Catheterization - Pediatric Diagnostic |
| Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) | Cardiac Surgery - Adult |
| Cardiac Surgery – Pediatric | Clinical Laboratory Service |
| Coronary Care | Emergency Department |
| Epilepsy Comprehensive Services | Intensive Care |
| Linear Accelerator | Magnetic Resonance Imaging |
| Maternity | Medical Social Services |
| Medical/Surgical | Neonatal Intensive Care |
| Neonatal Intermediate Care | Nuclear Medicine - Diagnostic |
| Nuclear Medicine - Therapeutic | Pediatric |
| Pediatric Intensive Care | Pharmaceutical Service |
| Physical Medical Rehabilitation | Physical Medicine and Rehabilitation O/P |
| Primary Medical Care O/P | Psychiatric |
| Psychology O/P | Radiology - Diagnostic |
| Radiology-Therapeutic | Renal Dialysis - Acute |
| Respiratory Care | Therapy - Occupational O/P |
| Therapy - Physical O/P | Therapy - Speech Language Pathology |
| Therapy - Vocational Rehabilitation O/P | Transplant - Bone Marrow |
| Transplant - Kidney | Transplant - Liver |

The hospital is authorized to operate hospital extension clinics at 13 other locations in New York and Queens Counties, offering services such as: Ambulatory Surgery, Occupational and Physical Therapy, Physical Medicine and Rehabilitation, Psychology, Primary Medical Care, Medical Social Services and Nuclear Medicine – Diagnostic.

State Designations:

A. Regional Perinatal Center; and
B. Stroke Center.

The new Kimmel Pavilion will provide the hospital with space for needed expansion in procedure capacity and allow for improvements in patient flow and work efficiency. The rooms will all be single bedded with a higher proportion of critical and intermediate care beds. The new building will connect at various floors to the existing Tisch Hospital building and will function as an extension and expansion of many of the existing programs within Tisch and on the NYU Hospitals Center campus. The Center's vision for its campus is to promote and enhance the integration of patient care, education and research, and to meet community needs by:

- Upgrading, standardizing, and integrating acute patient care services into a new North Clinical Campus;
- Extending ambulatory care and other resources to the "urban campus" of the surrounding neighborhood as well as distributing ambulatory services to the neighborhoods of its patient communities;
- Concentrating and expanding research and educational efforts primarily in the southeast corner of the campus, while developing further capacity in off-campus locations; and
- Building a robust and scalable infrastructure that meets the needs of the community.

## Analysis

### Patient Origin and Population

SPARCS inpatient data show that about 75 percent of the Center's patients resided in New York, Kings, and Queens Counties. Patients from these counties accounted for 32.1 percent, 25.7 percent and 11.7 percent of the hospital's total inpatient discharges, respectively.

In 2000, the combined population for these three counties was 6,232,100 residents. By 2010, the census for these counties increased by 1.4 percent to 6,321,295 persons. The greater proportion of growth occurred in New York County, which increased by 3.2 percent from 1,537,395 residents in 2000 to 1,585,873 in 2010. The population of Kings and Queens Counties increased by 1.6 percent and 0.1 percent, respectively. Projections for 2020 and 2030 show increased growth for all three counties. The population of the three (3) counties is expected to increase by 3.0 percent, from 6,321,295 in 2010 to 6,512,945 in 2020 (Table 3).

**Table 3:**
**Population Statistics: Kings, New York and Queens Counties**

| *County* | *2000* | *2010* | *2020* | *2030* |
|---|---|---|---|---|
| Kings County | 2,465,326 | 2,504,700 | 2,567,047 | 2,592,364 |
| New York County | 1,537,395 | 1,585,873 | 1,611,039 | 1,613,772 |
| Queens County | 2,229,379 | 2,230,722 | 2,334,859 | 2,413,499 |
| *Total* | *6,232,100* | *6,321,295* | *6,512,945* | *6,619,635* |

*Source: Census 2000 and 2010; Projections Cornell University Program on Applied Demographics 2020 and 2030*

### Inpatient Utilization

In 2007, New York University Hospital Center-Tisch recorded 32,426 total inpatient discharges. By 2010, these discharges increased by 5.3 percent, to 34,132. During the period, 6 of the 7 major service categories experienced increases in discharges, ranging from 1.5 percent to 140.8 percent. Major service category Pediatric posted a decline in discharges of 7.0 percent from 2,226 in 2007 to 2,071 in 2010.

During the review period, the hospital's total average daily census (ADC) ranged from 498 to 511 patients on any given day. In comparison to the total number of certified beds, the hospital experienced modest occupancy rates. These rates were a reflection of the hospital's relatively low average length of stay of less than 6.0 days (Table 4).

**Table 4:**
**New York University Hospitals Center: Inpatient Utilization by Major Service Category**

| *Service* | *2007* | *2008* | *2009* | *2010* | *Beds* |
|---|---|---|---|---|---|
| ***Discharges*** | | | | | |
| Medical/Surgical | 21,872 | 21,609 | 21,632 | 22,197 | |
| Pediatric | 2,226 | 2,187 | 2,149 | 2,071 | |
| Obstetric | 4,559 | 4,702 | 4,529 | 4,643 | |
| General Psychiatric | 431 | 402 | 414 | 479 | |
| Chemical Dependency | 49 | 71 | 69 | 118 | |
| High Risk Neonates | 320 | 398 | 401 | 452 | |
| Subtotal | 29,457 | 29,369 | 29,194 | 29,960 | |
| Healthy Newborns | 2,969 | 4,225 | 4,068 | 4,172 | |
| *Grand Total* | *32,426* | *33,594* | *33,262* | *34,132* | |
| ***Average Daily Census*** | | | | | |
| Medical/Surgical | 390 | 371 | 369 | 367 | |
| Pediatric | 36 | 36 | 36 | 36 | |
| Obstetric | 38 | 38 | 36 | 37 | |
| General Psychiatric | 15 | 15 | 16 | 18 | |
| Chemical Dependency | 1 | 1 | 1 | 2 | |
| High Risk Neonates | 12 | 16 | 13 | 20 | |
| Subtotal | 491 | 477 | 471 | 480 | |
| Healthy Newborns | 20 | 29 | 27 | 27 | |
| *Grand Total* | *511* | *506* | *498* | *507* | |
| ***Average Length of Stay*** | | | | | |
| Medical/Surgical | 6.5 | 6.3 | 6.2 | 6.0 | |
| Pediatric | 5.9 | 6.0 | 6.2 | 6.3 | |
| Obstetric | 3.0 | 2.9 | 2.9 | 2.9 | |
| General Psychiatric | 13.0 | 13.9 | 14.4 | 13.9 | |
| Chemical Dependency | 4.0 | 3.6 | 4.7 | 4.7 | |
| High Risk Neonates | 13.1 | 15.0 | 12.0 | 16.0 | |
| Subtotal | 6.1 | 5.9 | 5.9 | 5.8 | |
| Healthy Newborns | 2.5 | 2.5 | 2.4 | 2.4 | |
| *Grand Total* | *5.8* | *5.5* | *5.5* | *5.4* | |
| ***Occupancy Based on Current Beds*** | | | | | |
| Medical/Surgical | 52.1 | 49.6 | 49.3 | 49.1 | 748 |
| Pediatric | 74.6 | 75.4 | 75.6 | 74.8 | 48 |
| Obstetric | 105.6 | 104.4 | 99.7 | 103.3 | 36 |
| General Psychiatric | 69.5 | 69.5 | 74.1 | 83.2 | 22 |
| Chemical Dependency | 0.0 | 0.0 | 0.0 | 0.0 | 0 |
| High Risk Neonates | 46.0 | 65.2 | 52.8 | 79.6 | 25 |
| *Total* | *55.8* | *54.3* | *53.6* | *54.6* | *879* |

*Source: SPARCS 2007- 2010*

Emergency Department and Selected Outpatient Utilization

In 2007, NYU Hospitals Center recorded 38,539 total Emergency Department visits, 27.1 percent of which resulted in an inpatient admission. By 2010, the facility's total ED visits increased by 19.5 percent to 46,059. During the same period, the hospital recorded noticeable increases in ambulatory surgery procedures as well as rehabilitation and general clinic visits. Utilization in these service categories increased by 5.8 percent and 5.0 percent, respectively (Table 5).

**Table 5:**
**New York University Hospitals Center: Emergency Depart and Selected Outpatient Statistics**

| Year | Total Emergency Department Visits | % of Emergency Department Visits Resulting in Inpatient Admission | Amb/Surg Procedures | Rehab and General Clinic Visits |
|---|---|---|---|---|
| 2007 | 38,539 | 27.1 | 24,267 | 137,668 |
| 2008 | 40,536 | 26.9 | 22,826 | 148,580 |
| 2009 | 42,482 | 26.5 | 23,436 | 145,378 |
| 2010 | 46,059 | 25.8 | 25,671 | 144,498 |

*Source: Institutional Cost Reports, 2007 - 2008*

### Conclusion

NYU Hospitals Center –Tisch inpatient and outpatient services are well utilized by the residents of New York City. The construction of a new pavilion will allow the hospital to modernize its facility and reorganize its inpatient beds to meet the needs for its acute care services and address the limitations of the current campus. The project will provide the hospital with the opportunity to improve patient outcomes, increase patient, visitor and staff satisfaction, and to function in an effective and efficient manner.

### Recommendation

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

## Programmatic Analysis

### Project Proposal

NYU Hospitals Center requests approval to construct a new 22-story clinical pavilion and reconfigure various bed types, with no change to the total bed count, staffing, or services.

### 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

### Total Project Cost and Financing

Total project cost, which is for new construction, and the acquisition of moveable equipment is estimated at $1,232,353,281, itemized as follows:

| | |
|---|---|
| New Construction | $707,330,400 |
| Fixed Equipment | 56,943,765 |
| Asbestos Abatement and Removal | 2,802,522 |
| Design Contingency | 68,165,742 |
| Construction Contingency | 35,071,861 |
| Planning Consulting Fees | 1,423,681 |
| Architect Engineering Fees | 65,046,542 |
| Construction Manager Fees | 30,638,295 |
| Other Fees (Consultant) | 10,007,139 |
| Moveable Equipment | 111,519,008 |
| Telecommunications | 42,049,045 |
| Financing Costs | 22,599,766 |
| Interim Interest Expense | 72,012,658 |
| Application Fee | 2,000 |
| Additional Processing Fees | 6,740,857 |
| *Total Project Costs* | *$1,232,353,281* |

Project costs are estimated based on a March 1, 2013 start date and a 54-month construction period.

## Project Financing

Project Financing is presented below:

| | |
|---|---|
| Equity | $178,083,393 |
| *Fund Raising | 580,000,000 |
| DASNY fixed rate loan (5.88% for 30 years)** | 474,269,888 |
| Total | $1,232,353,281 |

** Currently NYU has raised $370,000,000 in fund raising investment.*

*** Rate is subject to change due to market conditions. Bonds are proposed to be unenhanced due to positive bond rating according to Moody's. The applicant indicates that the current Moody's rating is an A3.*

## Feasibility Assumptions

The applicant has provided an internal feasibility study relative to this project. BFA Attachments B through D present historical and forecasted results pertaining to the facility utilization and financial performance. Presented as Attachment E, is the cost analysis of the impact of the project. The following are the significant assumptions with respect to the applicant's budget:

Market Share Projections (Inpatient & Outpatient Visits)

BFA Attachment D presents historical and forecasted demand for Outpatient Visits and Inpatient Discharges based on the following assumptions:

- The number of Discharges in 2011 was 42,070 which represents a 71% occupancy rate and is projected to increase to 47,323 discharges or 82% occupancy rate by 2021 based on feasibility study.
- The number of visits in 2011 to NYU Langone Medical Center was 589,700 in 2011 and is expected to increase by approximately 32% or to 779,929 visits by year 2021 based on feasibility study.
- NYU currently is serving 63 zip codes as its primary service and an additional 194 zip codes as its secondary service. Discharges are projected to grow by an average of 3.3% per year and outpatient visits will grow by an average of 3% per year, which is consistent with historical growth since 2010.

Forecasted Financial Statements

Presented as BFA Attachment B and C are the forecasted balance sheet and statement of forecasted revenues and expenses for NYU Medical Center. Each statement's underlying results and assumptions are summarized below:

Balance Sheet:

- As shown on Attachment B, NYU has a positive working capital and a positive net asset position during the period shown.
- Debt service coverage ratio on outstanding debt for 2011 and the final two years projection period are as follows:

| 2011 | 2020 | 2021 |
|---|---|---|
| 5.94 | 4.78 | 4.70 |

Forecasted Statement of Revenues over Expenses:

As shown on BFA Attachment C, NYU has projected an excess of revenues over expenses for the period shown, which is consistent with historical experience.

- Operating margin ratio for 2011 and the projection for Year 1 and Year 3 are as follows:

| 2011 | 2017 | 2020 |
|---|---|---|
| 10.8% | 10.4% | 9.6% |

Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues: | $59,046,592 | $209,464,293 |
| Expenses: | | |
| Operating: | $76,619,166 | $159,641,479 |
| Capital: | 54,896,950 | 76,770,594 |
| Total Expenses: | $131,516,116 | $236,412,073 |
| Excess Revenues: | ($72,469,524) | ($26,947,780) |
| Utilization: (Visits) | 15,314 | 38,564 |
| Discharges: | 1,407 | 5,371 |

Capital cost breakdown by interest and depreciation:

| | | |
|---|---|---|
| Interest: | $32,183,902 | $31,344,497 |
| Depreciation: | 22,713,048 | 45,426,097 |

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

| | Year One | Year Three |
|---|---|---|
| Medicare Fee-for-Service | 27.79% | 28.29% |
| Medicare Managed Care | 4.34% | 4.28% |
| Medicaid Fee-for-Service | 4.16% | 4.05% |
| Medicaid Managed Care | 6.59% | 6.50% |
| Commercial Fee-for-Service | 48.88% | 48.80% |
| Commercial Managed Care | 3.80% | 3.70% |
| Private | .53% | .53% |

| | | |
|---|---|---|
| Charity Care | 1.08% | 1.07% |
| Other | 2.83% | 2.78% |

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

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | 3.29% | 3.34% |
| Medicaid Managed Care | 5.61% | 5.68% |
| Medicare Managed Care | 5.22% | 5.41% |
| Medicare Fee-for-Service | 30.59% | 31.33% |
| Commercial Fee-for-Service | 50.61% | 49.67% |
| Commercial Managed Care | 2.25% | 2.21% |
| Private | .25% | .24% |
| Charity Care | .47% | .45% |
| Other | 1.71% | 1.67% |

The Hospital Center's Kimmel project will enable the facility to promote efficient use of space that currently impedes programs from functioning together more seamlessly, emphasizes a patient centered service delivery, and enhances medical and health information technologies that should increase quality, efficiency, and patient safety.

A design team was used to study the utilization assumptions and provide data with industry guidelines/standards using a "per square foot" model for productivity, and taking into account historical utilization patterns and the future model of our changing healthcare environment.

Expense assumptions are based on staff productivity after the new building project is completed. Accordingly, staff levels will increase slightly due to the implementation of new systems and increased services.

## Capability and Feasibility

NYU will provide equity and fund raising in the amount of $758,083,393 to satisfy project costs and the remainder will be provided through a tax-exempt DASNY loan for $474,269,888 at 5.98% fixed rate for a 30 year term. A letter of interest has been received for the stated amount. Also, NYU will undertake a tranching strategy for the permanent debt associated with this project in order to avoid negative arbitrage costs. Presented as BFA Attachment A is the financial summary of NYU Hospital's Center, which indicates the availability of sufficient funds to meet the equity contribution of $178,083,393. Also, it should be noted that a fundraising campaign with a goal of $580,000,000 has been started and $370,000,000 has already been received. In the event contributions do not meet the required need, the applicant will use equity from its current investment fund to meet all necessary financial requirements.

The submitted budget indicates an incremental excess of expenses over revenues of $72,469,524 and $26,947,780 during the first and third years, respectively. The budget used current utilization data and reimbursement methodologies for the visits and discharges. The reason for the projected incremental loss is due to capital investment into the replacement facility, which will be absorbed by operations. The budget appears reasonable.

Presented as BFA Attachment A is a financial summary of the NYU Hospitals Center. As shown on BFA Attachment sA, NYU maintained an average positive working capital position and an average net asset position during the period shown. Also, the facility achieved an average annual excess of operating revenues over expenses of $143,474,000 for the last two years.

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, (Audited), NYU Hospitals Center 2010 & 2011 |
| BFA Attachment B | Historical and Forecasted Balance Sheet |
| BFA Attachment C | Historical and Forecasted Income Statement |
| BFA Attachment D | Historical and Forecasted Projections |
| BFA Attachment E | Summary of Detailed Budget |
| BHFP Attachment | Map |

# Public Health and Health Planning Council

## Project # 121431-C

## Nyack Hospital

***County:*** **Rockland (Nyack)**
***Purpose:*** **Construction**

***Program:*** **Acute Care Services**
***Submitted:*** **June 11, 2012**

## Executive Summary

### Description

Nyack Hospital, a 375-bed, not-for-profit hospital located in Rockland County, requests approval to certify 26 psychiatric beds through a conversion of medical/surgical (M/S) beds, undertake plant expansion and renovation, and relocate Rockland County's Mental Health Crisis Center to Nyack Hospital. Nyack Hospital is proposing a Behavioral Health Program consisting of two primary functional components – a Crisis Intervention Program and an Inpatient Behavioral Health Unit. Specific components of the expansion and renovation are as follows:

- Renovate space within Nyack Hospital's Emergency Department to house the County of Rockland Mental Health Crisis Center, which will become The Crisis Intervention Program.
- Renovate the third floor of the Maize Building to create a 26-bed inpatient behavioral health unit, separated into two distinct patient units.
- Relocate medical/surgical units within the hospital.
- Relocate the Medical ICU into newly-constructed space within a 5,040 square foot building addition on the 4th floor of the hospital.
- Relocate various administrative, non-clinical and ancillary clinical functions into renovated space throughout the hospital
- Relocate professional offices into renovated space located in a medical office building situated off of the hospital campus.

Total project costs are estimated at $8,004,891.

### DOH Recommendation

Contingent approval.

### Need Summary

The total number of certified inpatient beds will remain the same upon project completion. Occupancy at the hospital fluctuated between 44.5% and 47.4% from 2008 through 2010. Occupancy rates for psychiatric patients at Summit Park declined by 4.4% from 2008 to 2010, from 65.1% to 60.7%.

### Program Summary

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

### Financial Summary

Project costs will be met with a $7,800,000 HEAL NY – Phase 18 grant and $204,891 of accumulated funds.

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 7,514,566* |
| | *Expenses:* | *7,467,876* |
| | *Gain/(Loss):* | *$ 46,690* |

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. 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. Final approval from the Office of Mental Health. [RNR]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
4. The following contingency has been added "Decertification of 26 psychiatric beds by County of Rockland Summit Park Hospital. [PMU]"

**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 April 14, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Nyack Hospital is a 375-bed acute care facility located at 160 North Midland Avenue Nyack, 10960, in Rockland County. The facility seeks approval to convert 26 medical/surgical beds to 26 psychiatric beds and undertake major physical plant expansion for the relocation of Rockland County's Mental Health Crisis Center.

Nyack Hospital has the following certified beds and services:

**Table 1:**
**Nyack Hospital: Certified Beds by Service Category**

| *Bed Category* | *Current Capacity* | *Requested Action* | *Upon Completion* |
|---|---|---|---|
| Chemical Dependence - Rehabilitation | 20 | | 20 |
| Chemical Dependence - Detoxification | 10 | | 10 |
| Coronary Care | 10 | | 10 |
| Intensive Care | 22 | | 22 |
| Maternity | 21 | | 21 |
| Medical / Surgical | 273 | -26 | 247 |
| Neonatal Intermediate Care | 10 | | 10 |
| Pediatric | 9 | | 9 |
| Psychiatric | 0 | +26 | 26 |
| Total | 375 | 0 | 375 |

**Table 2:**
**Nyack Hospital: Certified Services**

| | |
|---|---|
| Ambulatory Surgery - Multi Specialty | Chemical Dependence - Detoxification |
| Chemical Dependence – Rehabilitation | Chemical Dependence - Rehabilitation O/P |
| Chemical Dependence – Withdrawal O/P | Clinic Part Time Services |
| Clinical Laboratory Service | Coronary Care |
| CT Scanner | Emergency Department |
| Health Fairs O/P | Intensive Care |
| Lithotripsy | Magnetic Resonance Imaging |
| Maternity | Medical Social Services |
| Medical/Surgical | Neonatal Intermediate Care |
| Nuclear Medicine – Diagnostic | Nuclear Medicine - Therapeutic |
| Pediatric | Pediatric O/P |
| Pharmaceutical Service | Radiology - Diagnostic |
| Renal Dialysis – Acute | Therapy - Occupational O/P |
| Therapy - Speech Language Pathology O/P | |
| | ***Add:*** |
| | Psychiatric |

Nyack Hospital is authorized to operate one (1) hospital extension clinic in Spring Valley that provides Chemical Dependence - Rehabilitation O/P services and has the following state designations:

- Area Trauma Center;
- Level 2 Perinatal Center; and
- Stroke Center.

The project will result in the following:

- the conversion of 26 medical/surgical beds to 26 psychiatric beds;
- the certification of Nyack Hospital to provide inpatient psychiatric services;
- the relocation of the Rockland County Mental Health Crisis Center to Nyack Hospital's Emergency Department (ED);
- the Mental Health Crisis Center will be staffed and operated by Nyack Hospital as an integral part of the ED;
- the center is expected to shorten length of stay and increase the number of patients served as well as prevent hospitalizations and readmissions for individuals experiencing an acute episode of mental illness;
- the County of Rockland Summit Park Hospital (SPH) adult inpatient unit will close; and
- Nyack Hospital will renovate space on its campus to house the new 26-bed unit.

The relocation of the Mental Health Service to Nyack Hospital will allow the hospital to meet the community's continuing need for mental health services. Nyack Hospital will be the sole acute care hospital in Rockland County certified to provide inpatient psychiatric services. The new unit will be sized based on the 2009 - 2010 average occupancy of the Rockland County unit.

Nyack Hospital has 305 total medical/surgical beds, including intensive care and coronary care. From 2008 to 2010, the total number of inpatient discharges increased by 4.6 percent from 9,944 to 10,398. In 2008, the average daily census (ADC) for any given day was 145 medical/surgical patients. By 2009, this had declined to 136 patients and was 137 in 2010. The associated average length of stay (ALOS) was 5.3 days in 2008 and 4.8 days in 2009 and 2010. During this interval, the occupancy rates for medical surgical patients fluctuated between 44.5 percent and 47.4 percent.

The creation of the new psychiatric unit at Nyack Hospital will provide inpatient care for the patients who previously received care at Summit Park Hospital (SPH). In 2008, SPH had 517 inpatient psychiatric discharges. By 2010, the number of discharges increased by 11.0 percent to 574. However, during the period, the average daily census declined by 7.1 percent from 28 patients on any given day to 26. The average length of stay recorded by the psychiatric patients at the hospital declined by 15.7 percent from 19.7 days in 2008 to 16.6 in 2010. Due to the declining psychiatric ADC and ALOS, the psychiatric occupancy rates at SPH declined by 6.8 percent, from 65.1 percent in 2008 to 60.7 percent in 2010 (Table 3).

**Table 3:**
**Utilization for Major Service Categories:**
**Nyack Hospital Medical /Surgical Inpatient**
**and Summit Park Hospital General Psychiatric Inpatient**

| *Hospital/Service Category* | *2008* | *2009* | *2010* | *Current Beds* |
|---|---|---|---|---|
| ***Nyack Hospital - Medical/Surgical*** | | | | |
| Discharges | 9,944 | 10,324 | 10,398 | |
| Average Daily Census | 145 | 136 | 137 | |
| Average Length of Stay | 5.3 | 4.8 | 4.8 | |
| Occupancy Based on Current Beds | 47.4 | 44.5 | 44.8 | 305 |
| | *2008* | *2009* | *2010* | *Current Beds* |
| ***Summit Park Hospital – Psychiatric*** | | | | |
| Discharges | 517 | 489 | 574 | |
| Average Daily Census | 28 | 24 | 26 | |
| Average Length of Stay | 19.7 | 17.6 | 16.6 | |
| Occupancy Based on Current Beds | 65.1 | 54.9 | 60.7 | 43 |

*Source: SPARCS 2008 – 2010*

### Summary

The relocation of the Rockland County Mental Health Crisis Center to Nyack Hospital and the creation of a new 26-bed inpatient unit at the hospital will provide the residents of Rockland County with emergency and inpatient psychiatric care in keeping with community needs.

Based on Nyack Hospital's historical medical/surgical utilization and its revised occupancy rates, the conversion of 26 medical/surgical beds to psychiatric beds will not have a negative impact on its medical/surgical unit.

### Recommendation

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

## Programmatic Analysis

### Background

Nyack Hospital requests approval to convert 26 medical/surgical beds to 26 inpatient psychiatric beds and relocate, to the hospital, a mental health crisis clinic which has been operated by Rockland County. The project includes physical plant renovations and expansion to support the project. It is anticipated that Summit Park Hospital will submit a CON to decertify 43 psychiatric beds as part of this project.

Staffing will increase by 62 FTEs by the end of year three.

### Compliance with Applicable Codes, Rules and Regulations

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 costs for new construction, renovations and movable equipment are estimated at $8,004,891, itemized as follows:

| | |
|---|---|
| New Construction | $1,666,383 |
| Renovation & Demolition | 3,481,658 |
| Design Contingency | 514,804 |
| Construction Contingency | 431,485 |
| Architect/Engineering Fees | 525,636 |
| Construction Manager Fees | 486,159 |
| Consultant Fees | 427,991 |
| Movable Equipment | 425,000 |
| Application Fee | 2,000 |
| Additional Processing Fee | 43,775 |
| Total Project Cost | $8,004,891 |

Project costs are based on a January 2, 2013 construction start date and a fourteen month and fifteen day construction period. The applicant's financing plan appears as follows:

| | |
|---|---|
| HEAL NY – Phase 18 | $7,800,000 |
| Accumulated Funds | $204,891 |

## Operating Budget

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

| | Years One and Three |
|---|---|
| Revenues: | $7,514,566 |
| | |
| Expenses: | |
| Operating: | 7,067,631 |
| Depreciation: | 400,245 |
| Total Expenses: | $7,467,876 |
| | |
| Net Income: | $46,690 |
| Utilization: | |
| Inpatient days | 9,125 |
| Cost per day | $577.00 |
| Outpatient visits | 4,500 |
| Cost per visit | $530.06 |

The following is noted with respect to the submitted Nyack Hospital budget:

- The inpatient cost per patient day is inclusive of $26.98 capital cost.
- The outpatient cost per visit is inclusive of $34.24 of capital cost.

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

| Inpatient | Years One and Three |
|---|---|
| Commercial Fee for Service | 8% |
| Medicare Fee for Service | 46% |
| Medicare Managed Care | 1% |
| Medicaid Fee for Service | 31% |
| Medicaid Managed Care | 6% |
| Private Pay | 8% |

| Outpatient | Years One and Three |
|---|---|
| Commercial Managed Care | 20% |
| Medicare Fee-for-Service | 30% |
| Medicare Managed Care | 20% |
| Medicaid Fee-for-Service | 20% |
| Medicaid Managed Care | 10% |

Expense and utilization assumptions are based on the historical experience of Nyack Hospital and Rockland County's Mental Health Crisis Center.

## Capability And Feasibility

Total project costs of $8,004,891 will be met with a $7,800,000 DOH approved and executed HEAL NY – Phase 18 grant and $204,891 of accumulated funds.

Presented as BFA Attachment A is the financial summary of Nyack Hospital, which indicates the availability of sufficient funds. The submitted budget projects a net income of $46,690 for the first and third years of operations. Revenues are based on prevailing payment methodologies and current payment rates. The budget appears reasonable.

As shown on BFA Attachment A, a financial summary of Nyack Hospital and Subsidiaries, the hospital has experienced negative working capital, maintained an average positive net asset position and net income from operations of $3,019,157 and $4,820,374 for 2010 and 2011, respectively.

Nyack Hospital has operated with a working capital deficiency since 2001. The Hospital has been able to significantly improve its working capital through better financial performance as a result of steady growth in revenue since 2005. The Hospital expects to completely eliminate the working capital deficiency during the next year and improve liquidity as a result of approximate income of $10,000,000 from a Rural Floor Budget Neutrality Appeal settlement, ARRA incentive payments from Medicare and Medicaid, monetization of antenna rentals, and reduction in account receivables due to the resolution of 2010 related issues. As of April 30, 2012 the Hospital's working capital has improved by approximately $3,500,000.

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 | Financial Summary for Nyack Hospital- 2011 |
| BFA Attachment B | Internal Financial Summary for Nyack Hospital as of April 30, 2012 |
| BHFP Attachment | Map |

# Public Health and Health Planning Council

## Project # 121119-C

## NYU Hospitals Center

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

***Program:*** **Ambulatory Surgery Center**
***Submitted:*** **March 7, 2012**

## Executive Summary

### Description

NYU Hospitals Center (NYU), an 879-bed not-for-profit hospital located in Manhattan, requests approval to relocate its outpatient gastrointestinal endoscopy program from its current location on the 2nd floor of Tisch Hospital at 560 First Avenue, New York, 10016, in New York County to leased space on the 23rd floor of the existing Verizon Building at 240 East 38th Street.

At the current site, the applicant currently provides Radiology Services and Transfusion Services, and proposes adding the following services: Gastroenterology, Intestinal Endoscopy, Pain Management, Ultrasound and Physical Therapy Services. The center will be called The NYU Gastrointestinal Endoscopy Program.

Currently, all of these services are offered at NYU, but services and support are located throughout various parts of the hospital and in different departments. Due to the aging population, NYU will centralize these services at the proposed new extension clinic. Utilization service is projected to increase because many of the patients would be closer to the extension clinic. This would allow NYU to consolidate services, allowing patients to move more rapidly through the system, creating more efficient scheduling and registration practices.

There will be no changes in the operating certificate of NYU Hospitals Center as a result of this application, only to the extension clinic's operating certificate.

The NYU Gastrointestinal Endoscopy Program at the Verizon Building will provide patient services in four (4) procedure rooms, five (5) patient pre-op stations, 10 recovery stations, and one (1) exam room.

Total project costs are estimated at $6,024.844.

### DOH Recommendation

Contingent approval.

### Need Summary

The number of proposed visits is as follows:

| | |
|---|---|
| Current Year: | 2,325 |
| First Year: | 2,982 |
| Third Year: | 3,183 |

The relocation is necessary to accommodate the larger NYU building project to construct a new patient tower. It will also allow for increased capacity to meet growing demand for endoscopy services.

### 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 cash equity.

| | | |
|---|---|---|
| Budget: | *Revenues:* | *$ 3,102,473* |
| | *Expenses:* | *2,819,130* |
| | *Gain/(Loss):* | *$ 283,343* |

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 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 lease that is acceptable to the Department of Health. [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 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]

Council Action Date
**October 11, 2012.**

# Need Analysis

### Background

The relocation of the gastrointestinal endoscopy program is required as part of NYU's building project. The site of the relocation is in the same zip code as the Tisch Building, and there will be no change in services or continuity of patient care.

### Analysis

The number of proposed visits is as follows:

| | |
|---|---|
| Current Year: | 2,325 |
| First Year: | 2,982 |
| Third Year: | 3,183 |

### Conclusion

The relocation is necessary to accommodate the larger NYU building project to construct a new patient tower. It will also allow for increased capacity to meet growing demand for endoscopy services.

### Recommendation

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

# Programmatic Analysis

### Background

NYU Hospitals Center requests approval to construct a single specialty gastroenterology ambulatory surgery extension clinic. The extension clinic is for the relocation of services currently provided at the hospital.

| | |
|---|---|
| Site Name: | NYU Langone Medical Center Endoscopy Center |
| Site Address: | 240 East 38th Street, 23rd Floor, New York |
| Surgical Specialties: | Gastronenterology |
| Procedure Rooms: | 4 |
| Hours of Operation: | Monday through Friday from 8:00 am to 8:00 pm |

There will be no changes to staffing or services concurrent with approval of this application.

### Compliance with Applicable Codes, Rules and Regulations

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

## Lease Agreement

The applicant has submitted a draft lease agreement for the site that they will occupy, which is summarized below:

| | |
|---|---|
| *Premises:* | 9,559 Sq. Ft. located at 240 East 38th Street, New York |
| *Lessor:* | NYU School of Medicine |
| *Lessee:* | NYU Hospitals University Hospital |
| *Term:* | 5 Year Term |
| *Rental:* | Year One - $620,332 ($64.89 per Sq. Ft.)<br>Year Three - $639,970 ($66.95 per Sq. Ft.) |
| *Provisions:* | NYU Hospital will pay rental fees based on actual cost in operating and maintaining the premises. This will include taxes, utilities, maintenance, and all costs associated with the site. The NYU School of Medicine owns the building that will be occupied by NYU Hospital. |

The applicant has submitted two letters indicating rent reasonableness. Also, there is no relationship between the lessor and lessee.

## Total Project Cost and Financing

Total project cost, which is for the renovation and moveable equipment, is estimated at $6,024,844, broken down as follows:

| | |
|---|---|
| Renovation and Demolition | $3,366,537 |
| Design Contingency | 225,000 |
| Construction Contingency | 325,000 |
| Architect Fees | 246,864 |
| Construction Manager Fees | 63,912 |
| Other Fees | 15,000 |
| Moveable Equipment | 1,357,741 |
| Telecommunications | 404,776 |
| Application Fee | 2,000 |
| Additional Processing Fee | 18,014 |
| Total Costs | $6,024,844 |

Project cost is based on a November 1, 2012 start date and a five-month construction period. The applicant will pay for this project via cash.

## Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues: | $2,839,545 | $3,102,473 |
| | | |
| Expenses: | | |
| Operating: | $1,697,818 | $1,796,038 |
| Capital: | 662,955 | 1,023,092 |
| Total Expenses: | $2,360,773 | $2,819,130 |
| | | |
| Excess Revenues: | $478,772 | $283,343 |
| | | |
| Utilization: (Visits) | 2,982 | 3,183 |
| Cost Per Visit: | $791.67 | $885.68 |

Presented as BFA Attachment B is a detailed budget summary for NYU Medical Center.

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

| | Years One and Three |
|---|---|
| Medicaid Managed Care | 4.4% |
| Medicaid Fee-For-Service | 1.4% |
| Medicare Fee-For-Service | 35.3% |
| Medicare Managed Care | 4.4% |
| Commercial Fee-For-Service | 54.0% |
| Private Pay | 0.2% |
| Charity Care | 0.3% |

Utilization and expense assumptions are based on historical experience of the existing operation at NYU.

### Capability and Feasibility

The hospital will meet project cost of $6,024,844 via cash equity. Presented as BFA Attachment A is a financial summary of NYU Hospital Center, which indicates the availability of sufficient funds for the equity contribution.

The submitted incremental budget projects excess revenues over expenses of $478,772 and $283,343 during the first and third years, respectively. The applicant's revenues reflect current reimbursement methodologies and rates of payment for endoscopic services, which are currently provided at the hospital. The budget appears reasonable.

Presented as BFA Attachment A is a financial summary of the New York University Hospitals Center. As shown on BFA Attachment A, NYU maintained an average positive working capital position and an average net asset position during the period shown. Also, the facility achieved an average annual excess operating revenues over expenses of $143,474,500 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.

### Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Financial Summary, NYU Hospital's Center |
| BFA Attachment B | Summary Detailed Budget |

# Public Health and Health Planning Council

## Project # 121468-C
## Montefiore Medical Center – Henry & Lucy Moses Division

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

***Program:*** **Ambulatory Surgery Center**
***Submitted:*** **June 28, 2012**

## Executive Summary

### Description

Montefiore Medical Center-Henry & Lucy Moses Division, the 726-bed main hospital site of the not-for-profit Montefiore Medical Center, is located at 111 E. 210th Street, Bronx. Via this CON, the applicant proposes to certify and construct an ambulatory surgery center extension clinic to be located at 1250 Waters Place, Bronx, to be known as the Montefiore Hutch Ambulatory Care Center. The purpose of the project is to:

- Better manage and care for the Montefiore population;
- Relocate a portion of the existing adult ambulatory surgery cases being performed in the hospital operating rooms at the Moses, Weiler and North Divisions to a more efficient and patient friendly environment;
- Relocate, consolidate and expand some of Montefiore's ambulatory clinical practices from various sites;
- Relocate and expand pediatric and adult primary care practices; and
- Initiate multispecialty programs in specific clinical areas which focus on collaboration among departments;
- Provide an opportunity for future growth for ambulatory surgery, imaging services, ambulatory specialty practices, primary care and multidisciplinary programs,
- Relocate and expand pediatric and adult primary care practices; and
- Improve access to care and patient satisfaction with care, in order to retain patients in the system, critical to an accountable care organization

The proposed Montefiore Hutch Ambulatory Care Center will have 12 operating rooms, 4 procedure rooms, pre-op testing, laboratory services, pharmacy, and outpatient imaging center, outpatient surgical specialty clinical programs, and primary care services. .

Total project costs are estimated at $142,254,486.

### DOH Recommendation

Contingent approval.

### Need Summary

Montefiore proposes this project in order to meet increasing demand for ambulatory surgery services. It is projected that this facility will perform 11,788 ambulatory surgeries, 11,534 imaging studies, provide 41,835 primary care visits and 103,045 clinical specialty visits and office based tests and procedures in year 1. In the third year of operation, it is projected that there will be 14,939 ambulatory surgeries 23,737 imaging studies, provide 47,460 primary care visits and 190,844 clinical specialty visits and office based tests and procedures.

### 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 via $35,000,000 TELP lease (5 yrs. @ 1.31%), $14,254,486 cash and a $93,000,000 loan from M&T Bank (16 yrs. at 3.5%).

| | | |
|---|---|---|
| Incremental Budget: | *Revenues:* | *$ 130,156,134* |
| | *Expenses:* | *118,451,091* |
| | *Gain/(Loss):* | *$ 11,705,043* |

The applicant indicates that due to the project's size, it will take time for the facility to ramp up to full operations and the facility will have an incremental loss in year one of operations. By year three however, the building will be more optimally utilized and the ambulatory volume will be almost double that of year one. Also, increased inpatient activity resulting from referrals from the increased outpatient activity, as well as operating room capacity increasing due to the relocation of the ambulatory surgery volume, allows the facility to project a positive financial position in year three of operations.

Subject to the noted contingencies, 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 loan commitment that is acceptable to the Department. [BFA]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of documentation of receipt of Public Authorities Control Board approval of the TELP financing that is acceptable to the Department of Health. [BFA]
5. 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 July 1, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

## Council Action Date

**October 11, 2012**

# Need Analysis

## Background

Montefiore Medical Center - Henry & Lucy Moses Division seeks approval to certify an extension clinic at 1250 Waters Place, Bronx, 10461, in Bronx County. The name of the new clinic will be Montefiore Hutch Ambulatory Care Center. The new facility will be a 12-story 262,701 square foot building. The extension clinic will provide many services, including multi-specialty ambulatory surgery, and will allow the hospital to decant and consolidate some of its ambulatory services at the new site.

Montefiore provides one third of all patient care and half of all the tertiary care for the 1.4 million residents of the Bronx. Through its IPA, Montefiore assumes full risk for 150,000 patients. Through its Pioneer ACO and lead Health Home, it is responsible for the quality and cost of care for another 40,000 patients.

## Analysis

Montefiore Hutch Ambulatory Care Center will have the following certified services:

| *Service* | *Proposed Action* |
|---|---|
| Ambulatory Surgery - Multi Specialty | ✓ |
| Audiology | ✓ |
| CT Scanner | ✓ |
| Family Planning O/P | ✓ |
| Health Fairs O/P | ✓ |
| Magnetic Resonance Imaging | ✓ |
| Medical Social Services | ✓ |
| Nuclear Medicine - Diagnostic | ✓ |
| Nutritional | ✓ |
| Ophthalmology O/P | ✓ |
| Optometry O/P | ✓ |
| Pediatric O/P | ✓ |
| Physical Medicine and Rehabilitation | ✓ |
| Primary Medical Care O/P | ✓ |
| Psychology | ✓ |
| Radiology - Diagnostic | ✓ |
| Therapy - Speech Language Pathology | ✓ |
| Well Child Care O/P | ✓ |

Ambulatory Surgical Facility

The applicant's delivery system priorities include the development of a state-of-the-art ambulatory surgery facility that meets the community need for surgical services, and increases capacity to primary and specialty ambulatory practices.

This project will relocate existing ambulatory surgery volume from the hospitals in the Montefiore System to the new extension clinic and provide for additional capacity for ambulatory surgery volume growth. The project will also relocate and consolidate gastroenterology and vascular surgery ambulatory specialty services and primary care services to the new site that are currently provided in various locations. In addition, there will be capacity for additional clinical specialty services and multidisciplinary clinical programs at the new location.

Montefiore does not have any ambulatory surgery capabilities outside of its hospitals. By reconfiguring and expanding its ambulatory clinical programs, Montefiore will meet the following needs:

- outpatient growth outpacing inpatient demand;
- limited capacity and access in current clinical programs, which constrains access and limits the opportunity for growth;
- appointment waiting times that exceed 30 days;
- outmigration of patients;

- a need to balance and integrate a multi-disciplinary ambulatory delivery system; and
- the need to provide ambulatory services in an efficient, flexible, and patient friendly environment.

Ambulatory surgery that is performed in the hospitals' operating rooms competes for time with inpatient and emergency cases and creates capacity constraints that prohibits additional growth.

The annual ambulatory surgery volume at the three Montefiore hospitals has increased by 6.5 percent from 27,976 cases in 2008 to 29,804 in 2011 as shown in Table 1. During the same period, inpatient surgical discharges increased by 1.5 percent from 26,428 to 26,832 as indicated in Table 2.

**Table 1:**
**Montefiore Hospitals Ambulatory Surgery Volume**

| *Hospital* | *2008* | *2009* | *2010* | *2011* |
|---|---|---|---|---|
| Montefiore - Einstein | 7,680 | 7,768 | 7,497 | 7,475 |
| Montefiore Moses | 14,431 | 14,624 | 15,916 | 15,662 |
| Montefiore - Mercy | 5,865 | 6,670 | 6,783 | 6,667 |
| *Total* | *27,976* | *29,062* | *30,196* | *29,804* |

*Source: SPARCS 2008 – 2011*

**Table 2:**
**Montefiore Hospitals Inpatient Surgical Discharges**

| *Hospital* | *2008* | *2009* | *2010* | *2011* |
|---|---|---|---|---|
| Montefiore - Einstein | 8,058 | 8,639 | 8,581 | 8,604 |
| Montefiore - Moses | 15,126 | 15,157 | 15,147 | 15,307 |
| Montefiore - Mercy | 3,244 | 3,339 | 3,061 | 2,921 |
| *Total* | *26,428* | *27,135* | *26,789* | *26,832* |

*Source: SPARCS 2008 – 2011*

In addition to an increase in ambulatory surgery volume, the applicant states that Montefiore physicians perform about 1,000 cases at other ambulatory surgery facilities.

Currently, Bronx County has five (5) Freestanding Ambulatory Surgery Centers. The type of ambulatory surgery service and number of cases performed at the centers are listed below in Table 3:

**Table 3:**
**Existing Ambulatory Surgery Centers: Bronx County**

| *AS Type* | *Name* | *2009* | *2010* | *2011** |
|---|---|---|---|---|
| Single – Endoscopy | Advanced Endoscopy Center | 8,140 | 8,802 | 8,278 |
| Multi Specialty | Ambulatory Surgery Ctr Greater NY | 9,558 | 10,455 | 9,854 |
| Single - Gastroenterology | New York GI Center, LLC | 8,606 | 7,973 | 6,825 |
| Multi Specialty | Surgicare Ambulatory Surgery Ctr NY | 3,749 | 3,464 | 3,537 |
| Multi Specialty | East Tremont Medical Center | 7,279 | 8,725 | 7,685 |
| | *Total* | *37,332* | *39,419* | *36,179* |

*Source: SPARCS 2009 – 2011.*
** SPARCS reporting for 2011 is incomplete.*

The services that will be housed in this extension clinic are:

- Ambulatory Surgery Center – Multispecialty;
- 12 operating rooms;
- 4 - procedure rooms; and
- other services such as MRI, primary medical care and well child care.

Projected Volumes
In the first year of operation, it is projected that this facility will perform 11,788 ambulatory surgeries, 11,534 imaging studies, provide 41,835 primary care visits and 103,045 clinical specialty visits and office based tests and procedures.

In the third year of operation, it is projected that this facility will perform 14,939 ambulatory surgeries 23,737 imaging studies, provide 47,460 primary care visits and 190,844 clinical specialty visits and office based tests and procedures.

It is also projected that there will be an increase in inpatient cases as a result of opening this extension clinic, partially due to the reduction in the outmigration of Bronx residents for services.

Services at Montefiore Hutch Ambulatory Care Center will be available Monday through Friday, between the hours of 7:00 am and 7:00 pm. The back-up hospital is Montefiore Medical Center, Einstein Division. The approximate travel time between the outpatient center location and the hospital is approximately less than five (5) minutes and the distance a distance of less than one-half (1/2) mile.

The ambulatory services extension clinic will serve the health care needs of the Bronx and Lower Westchester County communities.

### Conclusion

Montefiore Medical Center is proposing to construct an extension clinic that will include an ambulatory surgery center, imaging services, ambulatory clinical practices, primary care, and multidisciplinary specialty programs. This will allow Montefiore to expand access to care and more efficiently manage patient needs.

### Recommendation

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

## Programmatic Analysis

### Project Proposal

Montefiore Medical Center is requesting permission to construct an extension clinic at 1250 Waters Place, Bronx, to include ambulatory surgery, imaging services, primary care and specialty outpatient programs, as well as necessary ancillary services.

It is anticipated the project will result in an additional 260 FTEs in the first year and 538 FTEs by year three.

### Compliance with Applicable Codes, Rules and Regulations

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

### Lease Rental Agreement

The applicant will lease approximately 262,701 square feet in a to-be built building at 1250 Waters Place, Bronx, N.Y. (Bronx County), under the terms of the draft lease agreement summarized below:

| | |
|---|---|
| *Address:* | 1250 Waters Place, Bronx, N.Y. |
| *Lessor:* | Hutch Tower II, LLC |
| *Lessee:* | Montefiore Medical Center |
| *Term:* | 16 years with (3) 5 year renewal terms |

*Rental:* $8,400,000 for year 1 (31.98 per sq. ft), with a 2.5% non compounding basis increase for years 2-4(.80 per sq. ft) and a 3% non compounding basis increase for years 5-16(.96 per sq. ft).
*Provisions:* Triple net lease

The applicant has indicated that the lease arrangement will be an arms length lease arrangement. Realtor letters have been provided attesting to the rental rate being of fair market value.

## Total Project Cost and Financing

Total project cost for new construction and equipment is estimated at $142,254,486 itemized below:

| | |
|---|---|
| New Construction | $66,741,960 |
| Design Contingency | 5,251,000 |
| Construction Contingency | 3,337,000 |
| Planning Consultant Fees | 1,525,290 |
| Architect/Engineering Fees | 2,783,546 |
| Other Fees (Consultant) | 2,139,541 |
| Movable Equipment | 44,314,576 |
| Telecommunications | 9,073,150 |
| Financing Costs | 2,588,314 |
| Interim Interest Expense | 3,720,000 |
| Con Application Fee | 2,000 |
| Additional CON Processing Fee | 778,109 |
| Total Project Cost | 142,254,486 |

Total costs are based on a January 1, 2013 start date with an eighteen month construction period.

The applicant's financing plan appears as follows:

| | |
|---|---|
| Telp Lease 5 years at 1.31% | $35,000,000 |
| Cash | 14,254,486 |
| M& T bank loan 3.5% for 16 years | 93,000,000 |
| Total | $142,254,486 |

## Operating Budget

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

Inpatient

| | First Year | Third Year |
|---|---|---|
| Revenues | $25,348,713 | $65,114,870 |
| Other | 349,056 | 349,056 |
| Total Revenues | $25,697,769 | $65,463,926 |
| Expenses: | | |
| Operating | 16,240,666 | 42,162,591 |
| Capital | 0 | 0 |
| Total Expenses | 16,240,666 | 42,162,591 |
| Excess Revenue over Expenses | 9,457,103 | 23,301,335 |
| Utilization: (Patient discharges) | 1,070 | 2,697 |
| Cost per Patient discharge | $15,178 | $15,633 |

It is projected that there will be an increase in inpatient cases as a result of opening this extension clinic, partially due to the reduction in the outmigration of Bronx residents for services.

Outpatient

| | First Year | Third Year |
|---|---|---|
| Revenues | $30,603,893 | $64,692,208 |
| Total Revenues | $30,603,893 | $64,692,208 |
| Expenses: | | |
| Operating | $28,558,667 | $52,907,301 |
| Capital | $17,348,311 | $23,381,199 |
| Total Expenses | $45,906,978 | $76,288,500 |
| Excess Revenue over Expenses | ($15,303,085) | ($11,596,292) |
| Utilization: (Visits) | 107,438 | 216,218 |
| Operating Cost per Visit | $265.77 | $244.69 |
| Capital cost per visit | $161.52 | $108.14 |
| Total cost per visit | $427.29 | $352.83 |

Total

| | First Year | Third Year |
|---|---|---|
| Revenues | $55,952,606 | $129,807,078 |
| Other | 349,056 | 349,056 |
| Total Revenues | 56,301,662 | 130,156,134 |
| Expenses: | | |
| Operating | 44,799,333 | 95,069,892 |
| Capital | 17,348,311 | 23,381,199 |
| Total Expenses | 62,147,644 | 118,451,091 |
| Excess Revenue over Expenses | (5,845,982) | 11,705,043 |

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

| | Year 1 | Year 3 |
|---|---|---|
| Medicaid Fee-for-Service | 15.89% | 15.91% |
| Medicaid Managed Care | 15.61% | 15.61% |
| Medicare Fee-for-Service | 27.48% | 27.44% |
| Medicare Managed Care | 21.31% | 21.32% |
| Commercial Fee-for-Service | 9.72% | 9.75% |
| Commercial Manage Care | 8.13% | 8.08% |
| All Other | .33% | .34% |
| Charity Care | 1.53% | 1.55% |

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

| | Year 1 | Year 3 |
|---|---|---|
| Medicaid Fee-for-Service | 8.85% | 8.98% |
| Medicaid Managed Care | 24.95% | 25.06% |
| Medicare Fee-for-Service | 2.69% | 2.66% |
| Medicare Managed Care | 1.88% | 1.95% |
| Commercial Fee-for-Service | 34.95% | 34.88% |
| Commercial Manage Care | 16.18% | 15.92% |
| All Other | 1.89% | 1.90% |
| Charity Care | 8.61% | 8.65% |

Expenses are based upon a specific model in which six separate specialty areas were chosen; ambulatory surgery, specialty physician practice, primary care, imaging services, multidisciplinary centers and inpatient care. Per unit,

historical revenues and expenses in each area are calculated and modified to reflect only the expenses associated with the growth in volume. The incremental capital and space costs were also added. Utilization assumptions are based on a comprehensive market analysis and needs assessment, as well as a review and an update of Montefiore's mission, vision and values statements, and environmental assessments that analyzed both Montefiore's current competitive position within local and regional markets and emerging regional and national healthcare trends to evaluate how these would impact Montefiore.

### Capability and Feasibility

Total project cost of $142,254,486 will be funded as shown above.

Presented as BFA Attachment A are the 2010 and 2011 certified financial statements for Montefiore Medical Center, which shows that the facility had positive working capital and net asset positions during the period shown. The facility also generated an average net income of $83,418,500 during the period 2010-2011. Working capital requirements are estimated at $19,741,849, which appear reasonable based on two months of third year budgeted expenses. Based on BFA Attachment A, the facility has sufficient resources to fund both their working capital requirements and their equity requirements for the project.

The incremental budget for the first year and third years' of operations projects a loss of $5,845,982 and net revenue of $11,705,043, respectively.

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

### Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Financial Summary for 2011 and 2010, Montefiore Medical Center |
| BHFP Attachment | Map |

# Public Health and Health Planning Council

## Project # 121363-C
## Sunshine Children's Home and Rehab Center

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

***Program:*** **Residential Health Care Facility**
***Submitted:*** **May 2, 2012**

## Executive Summary

### Description
Sunshine Children's Home and Rehab Center (Sunshine) is an existing proprietary 44-bed pediatric residential health care facility (RHCF), located at 15 Spring Valley Road, Ossining. Via this CON, Sunshine requests approval for the permanent certification of the facility's six existing temporary pediatric beds and the permanent certification of four additional pediatric beds, increasing the total certified capacity from 44 to 54 pediatric RHCF beds. The facility currently has capped its waiting list to 20 pediatric patients seeking admission to the facility, and can immediately fill the four additional beds from its waiting list. The existing 50 pediatric RHCF beds are currently operating at 100% capacity. The applicant began operating the facility on September 1, 2009.

| | |
|---|---|
| Current Beds | 44 |
| Proposed Net New Beds | 10 |
| Beds Upon Project Approval | 54 |

On May 12, 2011, the facility requested temporary emergency approval to operate six additional pediatric beds at the facility in order to meet the demand for pediatric services in the community. On June 3, 2011, the Department granted temporary approval to the facility, effective June 13, 2011, to operate three additional pediatric beds, with the understanding that once additional renovations were completed at the facility, the Department would approve an additional three pediatric beds. On November 8, 2011, the Department granted the temporary approval for an additional three pediatric beds, increasing the facility's capacity to 50 pediatric RHCF beds.

### DOH Recommendation
Contingent approval.

### Need Summary
Sunshine consistently has a waiting list and only allows for 20 patients to be on the list at any time. This forces children that do not make the list to travel outside of New York State in search of treatment. The approval of this project will decrease this problem and help keep the patients and their families closer to home.

### Program Summary
The renovation project has created a more pleasant and functional facility for the children who live there, with the added benefit of easing the demand for pediatric placements. The unique living arrangement of multiple-bedded rooms without single bedrooms has been shown to be a beneficial configuration to meet the needs of the children and infants in the nursing home. Programmatic survey of the nursing home has continuously reinforced the appropriateness of operating the nursing home without single bedrooms, and the residential environment has been improved by the renovation project, even as the number of beds has increased.

### Financial Summary
There is no project cost associated with this application.

| | | |
|---|---|---|
| Incremental Budget: | *Revenues:* | *$ 2,411,046* |
| | *Expenses:* | *1,723,445* |
| | *Gain/(Loss):* | *$ 687,601* |

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 waiver of 10 NYCRR 713-3.4(4) from the applicant, and approval from the Bureau of Licensure and Certification. [LTC]
2. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Sunshine Children's Home and Rehab Center is a 44-bed pediatric residential health care facility (RHCF) located at 15 Spring Valley Road Ossining, 10562, in Westchester County. The facility seeks to make 6 temporary beds permanent, and add 4 additional net new beds. This will increase total capacity from 44 to 54 beds.

## Analysis

Westchester County Nursing Home utilization is higher than Westchester County for 2008, 2009, but was lower in 2010 as shown in the table below:

| *RHCF Occupancy* | *2008* | *2009* | *2010* |
|---|---|---|---|
| Sunshine Children's Home | 98.9% | 99.2% | 92.2%* |
| Westchester County | 93.2% | 93.3% | 92.8% |

**The facility may not have complete data for 2010. The facility is 100% full on a normal basis.*

As indicated below in the table below, the project 2016 bed need for Westchester County is -279. However, this need is for all residential nursing home beds. The Department of Health does not calculate need specifically for pediatric RHCF beds.

| *County RHCF Bed Need* | *Westchester* |
|---|---|
| 2016 Projected Need | 6,716 |
| Current Beds | 6,643 |
| Beds Under Construction | 352 |
| Unmet Need | -279 |

## Conclusion

The lack of pediatric access to long term care beds is a problem that forces families to seek treatment in other regions of New York or out of state. This project will help to alleviate that problem in Westchester County.

## Recommendation

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

# Programmatic Analysis

## Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | Sunshine Children's Home and Rehab Center | Same |
| *Address* | 15 Spring Valley Road, Ossining, NY 10562 | Same |
| *RHCF Capacity* | 44 + 6 temporary | 54 |
| *ADHC Program Capacity* | 0 | Same |
| *Type Of Operator* | Proprietary | Same |
| *Class Of Operator* | Limited Liability Company | Same |
| *Operator* | MSAF Group, LLC | Same |

## Program Review

Sunshine Children's Home and Rehab Center (Sunshine) is a 44-bed pediatric nursing home located on Spring Valley Road in Mount Vernon. Sunshine is a unique nursing home, specializing in the long term care of children ranging from toddlers to pre-teenagers. Due to the nature of its resident population, Sunshine includes multiple three-bedded and four- bedded rooms. The quad bedrooms contain cribs, with additional nursing staff assigned to each room to meet the needs of this age group. The triples are generously sized affording privacy and opportunities for socialization. Sunshine employs significantly greater staffing to provide the necessary developmental and educational resources for the children.

## Physical Environment

In June, 2010 Sunshine was approved for a $1.8 million project to renovate the facility, including the installation of a mandated sprinkler system, and to upgrade the residential areas and expand the substandard rehabilitation space. In order to expand therapy space the rehabilitation program was relocated into a modular structure, with the now vacant occupational and physical therapy rooms available for use as decanting space. This space was renovated and subsequently used as transition bedrooms as the room by room renovation progressed. Upon completion of the project these transition bedrooms became available to meet a spike in demand for pediatric placements from area hospitals. In June, 2011 Sunshine received emergency approval to operate 3 additional temporary beds, and in November, 2011 received approval for an additional 3 temporary beds to be located in the transition bedrooms.

The noted renovation project also addressed the overall living environment of the nursing home, with the nursing supervisory functions decentralized into resident-centered modules. This reorganization eliminated the glass walled central nursing station, creating additional space to meet the surging demand for beds. An existing three-bedded nursery was re-located into this area, with space for an additional crib. The vacated nursery was subsequently renovated and converted into a three-bedded pediatric room. The completion of these renovations permits the increase of four additional beds, (one crib and three pediatric beds). Therefore, upon approval, the permanent bed capacity could increase immediately from 44 beds to 54 beds.

## Compliance

There are currently no outstanding enforcements against Sunshine Children's Home and Rehab Center, nor are there any identified survey deficiencies.

## Project Review Analysis

The addition of permanent bed capacity can be made without additional renovation. The completion of the current project creates sufficient space to add beds, with six temporary beds already operating in the new rooms. The renovation project has created a more pleasant and functional facility for the children who live there, with the added benefit of easing the demand for pediatric placements. The unique living arrangement of multiple-bedded rooms without single bedrooms has been shown to be a beneficial configuration to meet the needs of the children and infants in the nursing home. Programmatic survey of the nursing home has continuously reinforced the appropriateness of operating the nursing home without single bedrooms, and the residential environment has been improved by the renovation project even as the number of beds has increased. DOH nursing staff has also reviewed the infection control protocol for the nursing home, which relies on leaving the sick child "in place" without relocation to an isolation room. The protocol was found to be effective, and the minor revisions suggested by DOH staff were put into practice by Sunshine.

However, Sunshine is in not in compliance with current regulations requiring a minimum of 10% of all beds be located in single rooms. Since regulations governing the operation of pediatric nursing units have not been promulgated, the nursing home is surveyed against the conventional nursing home standards contained in 10NYCRR 713-3, including 713-3.4(4). In order to continue with the permanent bed expansion, Sunshine will need to seek a waiver of the single bed requirement from the Bureau of Architectural Engineering Facility Planning.

## Recommendation

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

# Financial Analysis

## Operating Budget

The applicant has submitted an incremental operating budget for the ten additional beds, in 2012 dollars, during the first and third year, which is summarized below:

| | Year One | Year Three |
|---|---|---|
| Revenues | $2,411,046 | $2,411,046 |
| Expenses: | | |
| Operating | $1,717,725 | $1,717,725 |
| Capital | 8,994 | 5,720 |
| Total Expenses | $1,726,719 | $1,723,445 |
| Net Income | $684,327 | $687,601 |
| Utilization: (patient days) | 3,453 | 3,453 |
| Occupancy | 94.60% | 94.60% |

Utilization for the ten additional beds will be 100% Medicaid.

Expense and utilization assumptions are based on the historical experience of the facility.

## Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at $287,240, which appears reasonable based on two months of third year expenses. The applicant will finance $143,620 at an interest rate of 6.25% for five years. The remainder, $143,620, will be provided as equity by the members of the applicant. Presented as BFA Attachment A, is the personal net worth statement of the members of the applicant, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget projects a net income of $684,327 and $687,601 during the first and third years. Revenues are based on current reimbursement rates.

Presented as BFA Attachment B, is a financial summary of Sunshine Children's Home and Rehab Center during the period 2010 through 2011. As shown on Attachment B, the facility had an average negative working capital position and average negative net asset position during 2010 through 2011. Also, the facility incurred average net losses of $207,675 from 2010 through 2011. The applicant had a 2010 loss of $2,689,970, of which reflected a reduction in the facility's Medicaid rate based on the Department applying cost ceilings to the pediatric facility. The facility appealed its Medicaid rate, indicating that pediatric facilities are exempt from the application of cost ceilings and the appeal was successful in restoring the facility's Medicaid rate to actual costs. Consequently, the facility received retroactive Medicaid reimbursement in 2011 for prior periods and is awaiting a revised Medicaid rate for 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- Members of Sunshine Children's Home and Rehab Center |
| BFA Attachment B | Financial Summary- Sunshine Children's Home and Rehab Center. |

# Public Health and Health Planning Council

## Project # 121288-C
## Living Resources Certified Home Health Agency, Inc.

***County:*** **Albany (Albany)**
***Purpose:*** **Construction**

***Program:*** **Certified Home Health Agency**
***Submitted:*** **April 20, 2012**

## Executive Summary

### Description
Living Resources Certified Home Health Agency, Inc. (Living Resources) is a not-for-profit corporation approved as a special needs certified home health agency (CHHA) serving Albany, Fulton, Montgomery, Rensselaer, Schenectady, Saratoga, Schoharie, Warren, and Washington counties. Living Resources is requesting approval to convert their existing special needs CHHA to a general purpose CHHA, and to expand CHHA services into Columbia 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 certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Living Resources 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.

### DOH Recommendation
Approval.

### Need Summary
The applicant demonstrated an in-depth knowledge of the health needs of the community, specifically the medically underserved TBI and OPWDD populations. Living Resources has been instrumental in modifying homes to better serve patients with aging, mobility and Alzheimer conditions. The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as an analysis of unmet community need.

### Program Summary
Living Resources Certified Home Health Agency, 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:* | *$ 7,061,170* |
| | *Expenses:* | *6,113,100* |
| | *Gain/(Loss):* | *$ 948,070* |

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

**October 11, 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 would 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 would ensure access to CHHA services in counties with less than two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

The Living Resources Certified Home Health Agency proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. Living Resources discussed how the proposed general purpose CHHA will work with MLTCPs to serve the home health care needs of the population and provided details on the role they will play in supporting transitioning of consumer-directed programs into managed care. The applicant provided detailed information regarding their community linkages and referral sources and on how these play a vital role in care coordination and service delivery for MLTCPs.

The applicant demonstrated an in-depth knowledge of the health needs of the community, specifically the medically underserved TBI and OPWDD populations. Living Resources will bring their knowledge, expertise and experience to serve at-risk members of the general population through its transition to a general purpose CHHA. Living Resources thoroughly demonstrated their ability to enhance care coordination and ensure continuity of care for patients currently receiving home care services. Living Resources has been instrumental in modifying homes to better serve patients with aging, mobility and Alzheimer conditions. The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as an analysis of unmet community need. The application provided a description of the agency's long standing, extensive continuous quality improvement program and its focus on improving care processes and outcomes.

### Recommendation

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

## Programmatic Analysis

### Background

Living Resources Certified Home Health Agency, Inc. is an existing not-for-profit corporation which operates a CHHA approved to serve the special needs population of patients with mental retardation and developmental disabilities in the counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, and Washington Counties. Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties, the applicant seeks approval to convert their Special Needs Population CHHA to a general population CHHA, and to add Columbia County to their approved geographic service area. Living Resources Certified Home Health Agency, Inc. will continue to serve all counties from their existing offices at 300 Washington Avenue Extension, Albany, New York 12203.

Living Resources Certified Home Health Agency, Inc. will continue to provide the following home health care services: home health aide; medical social services; medical supplies, equipment, and appliances; nursing; occupational therapy, physical therapy, and speech language pathology. They are also requesting that nutritional services be added at this time to their operating certificate as an additional approved service.

Living Resources Certified Home Health Agency, 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:

| | Year One | Year Three |
|---|---|---|
| Revenues: | | |
| Medicaid Fee- for-service | $1,524,605 | $3,005,058 |
| Medicaid Managed Care | 988,314 | 1,952,931 |
| Medicare Fee-for-Service | 456,148 | 901,364 |
| Medicare Managed Care | 456,149 | 901,355 |
| Commercial Fee-for-Service | $76,018 | 150,232 |
| Commercial Managed Care | 76,019 | 150,230 |
| Total Revenues | $3,577,253 | $7,061,170 |

| | | |
|---|---|---|
| Expenses | $3,093,564 | $6,113,100 |
| Net Gain(Loss) | $483,689 | $948,070 |

Utilization by payor source for combined programs in the first and third years is as follows:

| Payor | Years One and Three |
|---|---|
| Commercial Fee-for-Service | 2.45% |
| Commercial Managed Care | 2.45% |
| Medicare Fee-for-service | 14.70% |
| Medicare Managed Care | 14.70% |
| Medicaid Fee-for Service | 31.85% |
| Medicaid Managed Care | 31.85% |
| Charity Care | 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 $1,018,850, 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 $483,689 and $948,070, 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 Living Resources Corporation and Affiliates. This shows the applicant has maintained a positive working capital position and a positive net asset position and achieved an average net income of $19,876 for the period 2010 through 2011. The loss in 2011 was due to the facility's special needs patients, who require a high intensity of service; and that the Medicaid rate, which applied to almost 100% of the overall caseload, was far below the actual costs. In order to correct this issue, the facility has submitted this CON in order to change from a special needs CHHA to a general purpose CHHA, which will expand and diversify its services and spread the overhead of the agency's operations.

Based on the preceding, 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, approval is recommended.**

## Attachments

BFA Attachment A Financial Summary for Living Resources Corporation and Affiliates 2010-2011.

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

# October 11, 2012

## A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

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

**CON Applications**

**Hospice Services – Construction** **Exhibit #7**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121405 C | Hospice Buffalo Inc<br>(Erie County)<br>Mr. Booth - Interest | Contingent Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121084 C | Pine Haven Home<br>(Columbia County)<br>Mr. Fassler - Interest | Contingent Approval |
| 2. | 121183 C | Wayne County Nursing Home<br>(Wayne County)<br>Mr. Booth - Interest | Contingent Approval |

**Upstate Certified Home Health Agencies - Construction** **Exhibit #9**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121199 C | At Home Care, Inc.<br>(Otsego County)<br>Mr. Booth - Interest | Contingent Approval |

| | | | |
|---|---|---|---|
| 2. | 121225 C | Park Ridge at Home – Park Ridge Nursing Home, Inc.<br>(Monroe County)<br>Mr. Booth – Recusal<br>Mr. Fassler - Interest<br>Ms. Hines – Recusal<br>Mr. Robinson – Recusal | Contingent Approval |
| 3. | 121274 C | Finger Lakes Visiting Nurse Service, Inc.<br>(Ontario County)<br>Mr. Booth – Recusal<br>Ms. Hines – Recusal<br>Mr. Robinson – Recusal | Contingent Approval |
| 4. | 122122 C | Visiting Nurse Services in Westchester, Inc.<br>(Westchester County)<br>Ms. Regan - Interest | Contingent Approval |
| 5. | 122123 C | Dominican Sisters Family Health Service, Inc.<br>(Westchester County)<br>Ms. Regan - Interest | Contingent Approval |

**Downstate Certified Home Health Agency - Construction** **Exhibit #10**

| | **Number** | **Applicant/Facility** | **E.P.R.C. Recommendation** |
|---|---|---|---|
| 1. | 121203 C | Personal Touch Home Aides of New York, Inc.<br>(Kings County)<br>Mr. Fassler – Interest<br>Ms. Regan - Interest | Contingent Approval |

# Public Health and Health Planning Council

## Project # 121405-C

## Hospice Buffalo, Inc.

***County:*** **Erie (Cheektowaga)**
***Purpose:*** **Construction**

***Program:*** **Hospice Services**
***Submitted:*** **May 24, 2012**

## Executive Summary

### Description

Hospice Buffalo, Inc., a not-for-profit corporation, requests approval for renovations to the clinical building at Hospice Buffalo's Mitchell Campus, 225 Como Park Boulevard, Cheektowaga. This proposal is designed to accomplish two objectives: create efficiencies and a better work environment for hospice clinicians, and create a more home-like and comfortable environment for patients and their families in need of end of life care.

To accomplish these tasks the renovation project will include:

- More central location and expansion of the Inpatient Unit nurses station.
- Upgrading the bathrooms in 22 patient rooms.
- General renovations of all 22 patient rooms leading to a more comfortable atmosphere.
- General upgrading of the Inpatient Unit common areas.
- Upgrading the Clinical Building's HVAC system so that each patient room can be individually temperature controlled.
- Adding a distinct patient/ambulance entrance to the Inpatient Unit.
- Reconfiguring and upgrading the building's commercial kitchen to make work flow more efficient.
- Relocating the chapel to make it more accessible.
- General refurbishment of the common areas.

It is anticipated that the Inpatient Unit will be closed for approximately 9 months. During this time, the 10-bed hospice house residence in the clinical buildings, which currently includes two dually-certified beds, will be used as an inpatient unit.

These 10 beds, in addition to the newly certified inpatient beds at the St. John Baptist Hospice Buffalo House, will provide Hospice Buffalo 18 inpatient beds for the duration of the construction. Swing beds will be utilized for additional inpatient need.

The Center for Hospice & Palliative Care, Inc. is the sole corporate member of Hospice Buffalo, Inc., Home Care Buffalo, Inc., Life Transitions Center, Inc., Caring Hearts Home Care, Inc., Palliative Care Institute, Inc., Hospice Foundation of Western New York, Inc., Saunders Properties of WNY, Inc. and Gilda's Club Western New York, Inc.

Total project costs are estimated at $9,143,586.

### DOH Recommendation

Contingent approval.

### Need Summary

As this project involves Hospice construction with no change in capacity, no Need recommendation is required.

### Program Summary

Hospice Buffalo, Inc. is currently in compliance with all applicable codes, rules, and regulations.

### Financial Summary

Total project costs will be met via equity of $4,143,586 and a loan of $5,000,000 (20 yrs. @ 2.24%).

| | | |
|---|---|---|
| Budget: | *Revenues:* | *$ 0* |
| | *Expenses:* | *272,334* |
| | *Gain/(Loss):* | *$ (272,334)* |

The applicant has indicated that the losses will be offset from operations.

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. 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 thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]

**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 October 1, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
**October 11, 2012.**

# Programmatic Analysis

## Background

Hospice Buffalo, Inc., a voluntary corporation, currently operates an Article 40 hospice which serves the residents of Erie County. It is also currently certified to operate a 22-bed hospice inpatient unit and a 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) in a freestanding facility located in Cheektowaga, and another 8-bed hospice residence unit (with 2 of these 8 residence beds dually certified for both inpatient care and residence care) in a freestanding facility located in Buffalo. On December 30, 2011, CON project 112069-C received Public Health and Health Planning Council approval for Hospice Buffalo, Inc., to convert the Buffalo facility from an 8-bed hospice residence unit to an 8-bed hospice inpatient unit. The hospice is currently in contact with the NYSDOH Western Regional Office – Buffalo to complete all necessary steps to finalize that CON project and receive final NYSDOH approval to begin operating that Buffalo facility as an all inpatient unit.

The current proposal seeks approval to renovate at this time just the 22-bed hospice inpatient unit located in their facility in Cheektowaga. During construction, which is anticipated to last approximately nine months, the hospice proposes to temporarily convert the 10 bed residence unit (with 2 dually certified beds) in that same facility in Cheektowaga, into a temporary 10 bed all inpatient unit. Once all construction renovations are complete, the hospice plans to revert back to the originally approved and operational configuration of a 22-bed hospice inpatient unit, plus a 10-bed hospice residence unit (with 2 dually certified).

The proposed renovations are designed to create a more home-like and comfortable environment for the patients and their families, and to create efficiencies and a better work environment for the hospice clinicians as they deliver care and train students in palliative and end-of life care.

The proposed renovations will include, but are not limited to, the following:

1) Centrally locate and expand the Inpatient Unit's nurses' stations.
2) Upgrade the private bathrooms in all 22 hospice inpatient rooms, including adding showers in each bath and replacing the bathroom doors to make the bathrooms safer and easier for clinical staff to attend to the patients.
3) Renovate each of the 22 private rooms, including installation of new built-in cabinetry, new lighting, new windows, and renovation of floors, ceilings, and walls to provide a fresh, more comforting atmosphere.
4) Upgrading the Inpatient Unit's common areas, including an upgrade of the family kitchen facilities.
5) Upgrading the HVAC system so that each patient's room may be individually temperature controlled.
6) Adding a distinct patient / ambulance entrance to the Inpatient Unit.
7) Reconfiguring and upgrading the building's commercial kitchen for more efficient work flow.
8) Relocating the chapel to make it more accessible to patients and families.
9) Renovate all other common areas, including the lobby, the bistro eating area, and the hallways.

Hospice Buffalo, Inc. is currently in compliance with all applicable codes, rules, and regulations.

## Recommendation

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

# Financial Analysis

## Total Project Cost and Financing

Total project cost, which is for new construction, renovation, demolition, and the acquisition of moveable equipment, is estimated at $9,143,586, itemized below:

| | |
|---|---|
| New Construction | $723,779 |
| Renovation and Demolition | 5,174,057 |
| Site Development | 135,026 |

| | |
|---|---|
| Design Contingency | 399,475 |
| Construction Contingency | 583,197 |
| Fixed Equipment | 520,283 |
| Architect/Engineering Fees | 376,500 |
| Moveable Equipment | 364,958 |
| Telecommunications | 210,000 |
| Financing Costs | 12,500 |
| Interim Interest Expense | 614,468 |
| CON Fees | 2,000 |
| Additional Processing Fee | 27,344 |
| Total Project Cost | $9,143,586 |

Project costs are based on an April 1, 2013 construction start date and an eighteen month construction period.

The applicant's financing plan appears as follows:

| | |
|---|---|
| Equity | $4,143,586 |
| Bank Loan (2.24% interest rate for a twenty year term) | 5,000,000 |

## Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues | $0 | $0 |
| Expenses: | | |
| Operating | $0 | $0 |
| Capital | 198,170 | 272,334 |
| Total Expenses | $198,170 | $272,334 |
| Excess of Revenues over Expenses | ($198,170) | ($272,334) |
| Utilization: (Patient Days) | 0 | 0 |

## Capability and Feasibility

The applicant will finance $5,000,000 at an interest rate of 2.24% for a twenty year term from the Hospice Foundation of Western New York. The remainder, $4,143,586, will be provided as equity via accumulated funds of the Hospice Foundation of Western New York.

Working capital requirements, which are estimated at $45,389, appear reasonable based on two months of third year expenses. The working capital will be met via equity from the Hospice Foundation of Western New York. Presented as BFA Attachment A is the financial summary for Hospice Foundation of Western New York, which indicates the availability of sufficient funds for the equity contribution for the project cost and the working capital.

The budget indicates an excess of revenues over expenses of ($198,170) and ($272,334) during the first and third years, respectively. The applicant has indicated that the losses will be offset from operations.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of Hospice Buffalo, Inc. As shown on Attachment B, the facility had an average positive working capital position and an average positive net asset position from 2010 through 2011. The facility achieved an average excess of revenues over expenses of $1,304,525 during 2010 and 2011. The facility incurred a loss in 2010 due to the following reasons: wage adjustments and staffing increases at Hospice Buffalo, Inc. The applicant implemented the following steps to improve operations: adjusted wages to reflect market rates and reduced staff turnover, leading to decreased investment in training.

Presented as BFA Attachment C are the 2010 and 2011 certified financial statements of The Center for Hospice & Palliative Care, Inc. As shown on Attachment C, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an excess of revenues over expenses of $2,515,525 from 2010 through 2011. The entity incurred a loss in 2011 of $453,256. The reasons for the loss in 2011 were the result of increased competition within the community, leading to increased levels of turnover. The applicant implemented the following steps to improve operations: the applicant's sole member, The Center for Hospice/Palliative Care, appointed a new CFO to head the organization; realigning the case load and increasing clinical staff, and adjusting wages to reflect market rates. Program investments included developing new products and programs, as well as growing two existing business lines.

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 of Hospice Foundation of Western New York |
| BFA Attachment B | Financial Summary Hospice Buffalo, Inc. |
| BFA Attachment C | Financial Summary The Center for Hospice & Palliative Care |

# Public Health and Health Planning Council

## Project # 121084-C

## Pine Haven Home

***County:*** **Columbia (Philmont)**
***Purpose:*** **Construction**

***Program:*** **Residential Health Care Facility**
***Submitted:*** **February 16, 2012**

## Executive Summary

### Description

Pine Haven Home is a 120-bed public skilled nursing facility, located at Route 217, Philmont. The applicant seeks approval for the construction of a 128-bed replacement facility, adding 8 net new beds. The building will be a one-story campus layout comprised of an ancillary building, which will be flanked by two residential neighborhoods. Each of the neighborhoods will be broken down into three households serving as the home for 64 residents, and will be sharing a common service core.

The new 128-bed facility will have a combination of both single and double rooms. In each neighborhood, two of the three households will be comprised of 2 private and 10 semi-private rooms and the third household will be comprised of 4 private and 8 semi-private rooms. The additional 8 beds that are being requested with this application are to cover the anticipated nursing home bed need for the county, which is projected to be eight additional beds by 2016.

Total project costs are estimated at $32,351,635.

### DOH Recommendation

Contingent approval.

### Need Summary

Pine Haven Home's certified capacity before and after completion of this CON is as follows:

| *Current* | *Change* | *After Completion* |
|---|---|---|
| 120 | +8 | 128 |

Pine Haven Home proposes to build a new facility that will include 8 additional beds, fulfilling the remaining need. Pine Haven Home has increased its occupancy by 6.5% from 2008 to 2010. Pine Haven also has the highest number of Medicaid admissions in Columbia County for 2010 at 77.5%. The modernization and modest expansion of the facility will also aid in the repatration of Columbia County residents who have sought RHCF care in neighboring Massachusetts.

### Program Summary

The proposed replacement Pine Haven Home will result in a therapeutic and home-like environment for its occupants. The superior design will be appealing to prospective residents and will enable the nursing home to maintain a very high occupancy. Pine Haven Home is currently in substantial compliance with all applicable codes, rules and regulations.

### Financial Summary

Project costs will be met via $32,351,635 in general obligation bonds (25 yrs. @ 3%).

| | | |
|---|---|---|
| Budget: | *Revenues:* | *$ 13,002,634* |
| | *Expenses:* | *14,901,351* |
| | *Gain/(Loss):* | *( $1,898,717)* |

Subject to the noted contingency, upon continued receipt of county supplemental funds, it appears that the facility can maintain operations. The Department is in receipt of a letter from the Chairman of the Columbia County Board of Supervisors stating that the county will continue to fund the operating deficits of the facility for the foreseeable future.

# Recommendations

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

Office of Health Systems Management
**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of a commitment signed by the applicant indicating that, within two years from the date of approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions.
3. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:

    a) Reach out to hospital discharge planners to 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 DOH, which demonstrates substantial progress with the implementation of the plan. The plan should include but not be limited to:

        - Information on activities relating to a-c above; and
        - Documentation pertaining to number of referrals and number of Medicaid admissions; and
        - Other factors as determined by the applicant to be pertinent.

    The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

4. The submission of and programmatic review and approval of final floor plans. [LTC]
5. Submission of the County Bond and Note Resolution that is acceptable to the Department of Health. Included with the submitted bond and note resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
6. 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 October 1, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Pine Haven Home, a 120 bed public residential health care facility, located at NY Route 217, Philmont, 12565, in Columbia County seeks approval to build a replacement facility and add 8 net new beds for a total of 128 beds.

Pine Haven Home's utilization is higher than Columbia County for 2009 and 2010, but was less than the rate for the county as a whole in 2008 as shown in the table below:

| ***RHCF Occupancy*** | ***2008*** | ***2009*** | ***2010*** |
|---|---|---|---|
| Pine Haven Home | 88.26% | 94.06% | 94.94% |
| Columbia County | 93.10% | 92.30% | 91.70% |

As shown in the table below, there is currently a need for 8 beds in Columbia County. However, since the county's utilization is below 97%, there is a rebuttable presumption that there is no need for additional beds. Pine Haven Home has provided the following local factors to rebut the presumption of no need.

- There are currently 29 Columbia County residents receiving care in residential health care facilities located in Massachusetts. The addition of 8 beds will allow some of these patients to repatriate to Columbia County.
- Specialized services will be offered in the new facility to repatriate patients who may have left the county in search of treatment. These services may include Huntington's disease services, wound care, bariatric services, and orthopedic rehabilitation. In addition, the facility is collaborating with local health care providers to have on-site physician specialists.
- Pine Haven Home acts as a safety net for Columbia County residents. Pine Haven accepts residents that other facilities may be reluctant to accept, such as those with special care needs and inability to pay.
- Pine Haven's rate of Medicaid admissions, 77.5% in 2010, is the highest of any facility in Columbia County.
- The 65 and older population in Columbia County is 18.7% compared to the statewide average of 13.7%.
- The 85+ population in Columbia County is 3.1% compared to the statewide average of 1.9%. The 85+ population is the group that will most likely utilize a residential health care facility.
- There has been an increase of 12.9% of the 85+ population in Columbia County.
- There is an expectation that residents who own second homes in Columbia County will seek RHCF treatment for their elderly relatives in the county.
- The new facility will be constructed using current standards, which will increase the quality of care for residents and allow for cost efficiencies.

| ***Table 2: RHCF Need – Columbia County*** | |
|---|---|
| 2016 Projected Need | 667 |
| Current Beds | 648 |
| Beds Under Construction | 11 |
| Total Resources | 659 |
| Unmet Need | 8 |

### Medicaid Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

Upon approval, Pine Haven Home will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage, whichever is applicable.

### Conclusion

The addition of eight beds to Pine Haven and the associated changes in the new facility will promote cost efficiencies in operation and help improve quality of care. They will also satisfy the need for beds in Columbia County, which has a high proportion of older people, including those 85 and above. The expansion of the facility and the associated offering of more specialized services will also aid in the repatriation of Columbia County residents who have sought care in neighboring Massachusetts. Such repatriation of New Yorkers to facilities and services in New York State is consistent with the goals of Medicaid Redesign.

### Recommendation

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

## Programmatic Analysis

### Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | Pine Haven Home | Same |
| *Address* | PO Box 785, NY Route 217<br>Philmont, NY 12565 | Same |
| *RHCF Capacity* | 120 | 128 |
| *ADHC Program Capacity* | N/A | N/A |
| *Type of Operator* | Public | Same |
| *Class of Operator* | County | Same |
| *Operator* | Columbia County | Same |

Pine Haven Home is a 120 bed nursing home located in the Town of Philmont, Columbia County. The current building is situated on a 54-acre parcel and, while generally code compliant, is expensive to operate and functionally obsolete. The Board of Directors of Columbia County has opted to construct a 128-bed replacement facility, which will include an additional 8 SNF beds, on the same campus as the existing nursing home building.

### Physical Environment

The plan for the new Pine Haven Home can be seen as a virtual textbook of contemporary residential design, embracing the concepts of resident choice and socialization. Utilizing a single- story layout the plan creates a central ancillary core connected to a series of arrow points which comprise the residential neighborhoods. Entry into the nursing home is made at the center of the building, which opens into a “grand lobby” with a concierge desk. An adjacent hearth room warmed by multiple electric fireplaces offers opportunities for interaction with residents and visitors.

Administrative offices frame the entry space, with the hearth room ringed by an array of resident services, including rehabilitation gym and ADL training apartment, activities space, a personal laundry and a beauty parlor. A bistro and café, arrayed with televisions akin to a sports bar, is located adjacent to the hearth room, providing an additional

venue for socialization with families and friends. The rear area of the ancillary core houses the central kitchen and food storage area, with a nearby service elevator connecting to the ground floor, which contains the industrial functions including laundry, receiving dock and mechanical and electrical rooms, and a cluster of conference rooms.

Flanking the central core are twin 64 bed nursing units, with each nursing unit subdivided into three neighborhoods consisting of two 22 bed and one 20 bed units. The 22 bed sub-units include ten doubles and two singles, and the 20 bed sub-unit on the end includes eight doubles and four singles. Each neighborhood includes a country kitchen with pantry and dining area, multiple spa bathing areas, and a hearth room and parlor for resident socialization. The resident rooms feature two configurations of single bedrooms, including a generously-sized "studio" complete with 3 foot by 6 foot shower, and three configurations of double bedrooms. The doubles uniquely locate the toilet rooms toward the center, creating a divider between the beds forming an angular living area. The corner double is a particularly appealing design with the toilet room touching the outside corner, resulting in two mini-single bedrooms with a lounge chair and side table with flat screen television on each side of the window.

The interior ends of each nursing unit include large spa bathing areas with whirlpool tubs, and adjacent multipurpose rooms. Recreational and activity space is also incorporated into these areas on both sides of the ancillary core, including an "indoor screened porch" and sunroom, library, private dining room and family lounge.

The design incorporates ample outdoor space throughout the campus, with a covered patio accessible from the parlor area in each neighborhood. The nursing units are also designed to permit the direct entry of family and friends into each neighborhood during daytime hours through a vestibule off the patio, with entry controlled from the nurse alcove in the center of the unit. Patios and terraces are also arrayed between each segment of the building providing additional outdoor activity space.

Pine Haven Home is currently in substantial compliance with all applicable codes, rules and regulations.

### Conclusion

The proposed replacement Pine Haven Home will result in a therapeutic and home-like environment for its occupants. The superior design will be appealing to prospective residents and will enable the nursing home to maintain a very high occupancy.

### Recommendation

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

## Financial Analysis

### Total Project Cost and Financing

Total project cost for Construction and the acquisition of movable equipment is estimated at $32,351,635, itemized as follows:

| | |
|---|---|
| New Construction | $17,000,000 |
| Site Development | 5,400,000 |
| Temporary Utilities | 230,000 |
| Design Contingency | 2,263,000 |
| Construction Contingency | 1,131,500 |
| Fixed Equipment | 150,000 |
| Architect/Engineering Fees | 2,081,960 |
| Construction Manager Fees | 1,301,250 |
| Movable Equipment | 1,680,000 |
| Financing Fees | 70,000 |
| Interim Interest Expense | 865,000 |
| CON Application Fee | 2,000 |
| CON Processing Fee | 176,950 |
| Total Project Cost | $32,351,635 |

Project cost is based on an April 1, 2014 start date and 18 month construction period.

Based on the mid-point of construction, the Bureau of Architectural and Engineering Facility Planning has determined that the respective cost per bed exceeds the appropriate bed cost caps by $12,349 per bed. As a result, the allowable project cost will be limited to $30,762,256 for reimbursement.

| | |
|---|---|
| $239,000 per bed cap x 128 beds | $30,592,000 |
| CON Application Fee | $2,000 |
| CON Processing Fee | $168,256 |
| Total Reimbursable Project Cost | $30,762,256 |

Total project financing is as follows:

| | |
|---|---|
| General obligation bond @ 3% for 25 years | $32,351,635 |

The Department of Health has determined that reimbursement for interest expense should be limited to 85% of the allowed reimbursable project cost for reimbursement purposes instead of 75% reimbursement limit, due to the applicant modernizing the facility in order to provide a safer and more caring environment for the frail, elderly, and hard to place residents in need of long term care and the facility's overall financial hardship in treating these individuals.

## Operating Budget

The applicant has provided an operating budget, in 2012 dollars, for the first year subsequent to facility replacement. The budget is summarized as follows:

| | Per Diem | Total |
|---|---|---|
| Revenue: | | |
| Medicaid | $221.39 | 6,822,608 |
| Medicare | 350.02 | 1,903,385 |
| Private Pay/Other | 335.61 | 3,041,953 |
| Intergovernmental Transfer | | 1,272,000 |
| Bad Debt | | (37,312) |
| Total | | $13,002,634 |
| Expenses: | | |
| Operating | | $12,509,524 |
| Capital | | 2,391,827 |
| Total | | $14,901,351 |
| Excess Revenues/(Expense) | | ($1,898,717) |

The following is noted with respect to the operating budget:

- Medicare assumes an 11.1% overall reduction to Medicare rate, and private pay and other revenues assume an enhanced rate of approximately 20% over the previous years rate due to the new facility.
- Occupancy is projected at 97.00% for the first and third years of operations which is 2% higher than the current year's occupancy.
- Utilization by payor source is projected as follows:

| | |
|---|---|
| Medicaid | 68.00% |
| Medicare | 12.00% |
| Private Pay/Other | 20.00% |

## Capability And Feasibility

Project Costs of $32,351,635 will be met through general obligation bonds at a 3% interest rate for 25 years.

Working capital requirements are estimated at $2,483,559 based on 2 months of year one expenses.

The facility and Columbia County Board of Supervisors have stated that the applicant will be subsidized by Columbia County if required. The county's financial statements, shown as BFA Attachment B, show the ability to fund the working capital requirements.

Review of BFA Attachment A, financial summary of Pine Haven Home, reveals an average positive working capital and average positive net asset position for the facility. The facility shows an average net loss of $ 2,569,276, prior to receiving supplemental income from the county. After receiving county support, the facility has an average positive net income of $141,497. The overall losses are due to the elimination of the inflation factor in the reimbursement rates since 2008, lower occupancy due to the obsolete building, as well as the home accepting lower acuity/lower reimbursement residents.

The issue of feasibility centers on the applicant's ability to offset expenses with revenues. The submitted budget indicates that excess expenses of $1,898,717 would be generated in the first year following replacement. The losses will be offset by Columbia County.

In reviewing the application, the facility is showing a significant reduction in losses in the Year 1 Budget shown above. Currently, prior to the county adjustment, the facility has an average net loss of $2,569,276 for the period 2008-2011. The projected net loss as shown above is approximately $670,000 less prior to county adjustments or approximately a 26% reduction. This shows a positive trend and in review of the Year 3 Budget the loss drops another approximately $30,000 from Year 1. This information shows that the facility is actively reducing its losses and is working towards breakeven or profitable operations with minimal help from the county.

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 applicant has provided documentation from the Board of Supervisors (Adopted November 9, 2011) supporting and directing the submission of this Certificate of Need application. The applicant also provided a letter from the Chairman of the Columbia County Board of Supervisors (dated May 8, 2012) indicating the County's willingness to continue financial support for the nursing home. The applicant indicates that this project is critical to the facility, because a modern structure will better meet the physical and emotional needs of the residents. Also with this application, the facility is adding 8 certified beds in order to meet the 2016 bed needs for Columbia County, which is a total of 8 net new beds.

As shown on BFA Attachment B Financial statement for Columbia County, the county had an average positive working capital position and an average positive net asset position, and generated an average net loss of $65,313 for the period 2009-2010. The county however, appears to have a current equity position of $27,549,430 for 2010; therefore, it appears that the county has sufficient resources to continue to offset losses.

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 2008-2011 Pine Haven Home |
| BFA Attachment B | Financial Summary Columbia County 2009-2010 |

# Public Health and Health Planning Council

## Project # 121183-C
## Wayne County Nursing Home

***County:*** **Wayne (Lyons)**
***Purpose:*** **Construction**

***Program:*** **Residential Health Care Facility**
***Submitted:*** **April 3, 2012**

## Executive Summary

### Description
Wayne County Nursing Home, a 190-bed county-owned residential health care facility (RHCF) located at 1529 Nye Road, Lyons, requests approval to the two respite beds currently on its operating certificate to RHCF beds. After approval, the facility will have 192 RHCF beds.

The two respite beds were a new service that began with the move to the replacement facility in 2005. The need for these beds has not developed as anticipated, while referrals for RHCF care have been steady. With referrals for RHCF beds remaining constant, often admissions are denied because of a lack of available beds, while the respite beds remain empty.

### DOH Recommendation
Contingent approval.

### Need Summary
The unmet 2016 RHCF bed need for Wayne County is 86. Occupancy for the Wayne County Nursing Home was 96.9% in 2008, 96.9% in 2009, and 96.3% in 2010.

| Current | Change | After Completion |
|---|---|---|
| 190 | 2 | 192 |

The nursing home currently has a waiting list of 30 patients because the facility is unable to meet a need for both short-term rehabilitation admissions and longer term RHCF resident admissions. The requested addition of two RHCF beds will help ameliorate this problem.

### Program Summary
The conversion of two respite care beds to RHCF beds at Wayne County Nursing Home will permit the full utilization of space in the building at no cost, while preserving a resident-friendly environment. Wayne County Nursing Home is in current compliance with all codes, rules and regulations.

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

| Incremental Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 81,654* |
| | *Expenses:* | *69,696* |
| | *Gain/(Loss):* | *$ 11,958* |

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

# Recommendations

## Health Systems Agency

The Finger Lakes HSA recommends approval of 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. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:

    (a) Reach out to hospital discharge planners to 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 DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:

        - Information on activities relating to a-c above; and
        - 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 DOH reserves the right to require continued reporting beyond the two-year period. [RNR]

## Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

Wayne County Nursing Home is a 190-bed public residential health care facility (RHCF) located at 1529 Nye Road, Lyons, 14489, in Wayne County. It seeks to convert its two short-term respite beds to long-term beds.

## Analysis

Occupancy for the Wayne County Nursing Home is slightly higher than the average for all nursing homes in Wayne County for 2008, 2009, and 2010, as shown in the table below:

| *RHCF Utilization* | *2008* | *2009* | *2010* |
|---|---|---|---|
| Wayne County Nursing Home | 96.9% | 96.9% | 96.3% |
| Wayne County | 96.2% | 96.4 | 95.4% |

As indicated below in the table below, the project 2016 RHCF bed need for Wayne County is 635 and the unmet need is 86.

| *RHCF Bed Need* | *Wayne County* |
|---|---|
| 2016 Projected Need | 635 |
| Current Beds | 549 |
| Beds Under Construction | 0 |
| Total Resources | 549 |
| Unmet Need | 86 |

Although the nursing home's occupancy level is slightly below the planning optimum of 97 percent, the facility is unable readily to meet a need for both short-term rehabilitation and long-term RHCF residency, as evinced by a waiting list of 30 patients for the latter category of admissions. The approval of the additional two RHCF beds through conversion of the facility's two respite beds would help ameliorate this problem.

## Medicaid Admissions

Regulations require that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission polices and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Wayne County Nursing Home was above the 75 percent planning average for 2009 but was below that in 2008. The facility reported Medicaid admissions of 7.47 percent and 5.61 percent in 2008 and 2009 respectively. The 75 percent planning averages for Wayne County for these years were 7.57 percent (2008) and 5.39 percent (2009).

## Conclusion

The facility's two respite beds have been consistently underutilized, from an occupancy rate of 24 percent in 2006, to a mere three percent in 2009. The conversion of these two beds to RHCF beds would permit more efficient utilization of the nursing home's total bed capacity and help reduce the facility's waiting list of long-term RHCF patients.

## Recommendation

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

# Programmatic Analysis

## Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | Wayne County Nursing Home | Same |
| *Address* | 1529 Nye Road<br>Lyons, NY 14489 | Same |
| *RHCF Capacity* | 190 + 2 Respite | 192 |
| *ADHC Program Capacity* | 0 | 0 |
| *Type Of Operator* | Public | Same |
| *Class Of Operator* | County | Same |
| *Operator* | Wayne County Board of Supervisors | Same |

## Program Review

Wayne County Nursing Home is a 190 bed nursing home located at 1529 Nye Road, Lyons. In October, 2005 a new nursing home building opened which included a respite 2 program, replacing an obsolete 1970's structure. While the demand for beds in the nursing home has remained strong, currently 96% with an overall occupancy rate of nearly 98% for the past five years, the respite program beds have remained mostly vacant, tailing from a 24% occupancy rate in 2006 to a miniscule 3% in 2009. In order to alleviate the underutilized occupancy situation, Wayne County has proposed converting the two respite beds into conventional nursing home beds.

## Physical Environment

Wayne County Nursing Home is a two-story structure with each floor containing two 48-bed nursing units in Y-shaped clusters of 23-25 beds. Each cluster includes a bathing suite, and an open country kitchen dining area adjoins each cluster. The two respite beds are located in double occupancy bedrooms on the "Canal" wing. The respite beds are not situated in a discrete bedroom, but are cohorted with a conventional nursing home bed. As a result the bedrooms are identical to the other double bedrooms in the building, and fully furnished. The "conversion" of these beds to conventional nursing home beds will result in a decrease in the overall number of single bedrooms from 66 to 64, but will not change the size of the nursing unit.

No renovations are required to convert the respite rooms to nursing home bedrooms, with the rooms already fully furnished.

## Compliance

Wayne County Nursing Home is in current compliance with all codes, rules and regulations.

## Conclusion

The addition of two beds at Wayne County Nursing Home will permit the full utilization of space in the building at no cost, while preserving a resident-friendly environment.

## Recommendation

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

# Financial Analysis

## Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues | $81,654 | $81,654 |
| Expenses: | | |
| Operating | $69,696 | $69,696 |
| Capital | 0 | 0 |
| Total Expenses | $69,696 | $69,696 |
| Excess of Revenues over Expenses | $11,958 | $11,958 |
| Utilization: (patient days) | 365 | 365 |
| Occupancy (Incremental) | 50% | 50% |

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

- Medicaid revenues are based on the current reimbursement rate of the facility.
- Utilization is projected to be 100% Medicaid.

## Capability and Feasibility

There is no issue of capability, since there is no total project cost associated with this application.

The submitted incremental budget indicates an excess of revenues over expenses of $11,958 during the first and third years. Revenues are based on the facility's current reimbursement rates.

Presented as BFA Attachment A are the 2010 and 2011 certified financial statements of Wayne County Nursing Home. As shown, the facility had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the facility incurred an average operating loss of $1,915,776 from 2010 through 2011. The applicant has indicated that the reason for the losses are as follows: benefit costs are rising, of which the 2011 rate is at 52%; the county charges the nursing home for the health insurance costs for retirees hired before March 1977, whose CSEA contract includes health insurance paid by the County; some ancillary services are contracted to other County departments; and nursing shortages and turnover in staff have led to an increased reliance on agency nursing and overtime costs.

The applicant is relying on the following steps to improve operations: convert two respite beds to SNF since occupancy in these beds is lower than expected (25% currently); reviewing the possibility of outsourcing other ancillary services; increasing revenues for inpatient and outpatient rehabilitation; revamped the purchasing to reduce supply costs; hired a full time MDS coordinator to ensure proper recording and revenue reimbursement; revisiting policies to increase occupancy in the rehab beds, thus increasing overall occupancy; taking steps to improve marketing to become more visible to hospitals in the area, and monthly budget meetings with County administration to monitor progress. The County has subsidized indirect costs of $200,774 and $244,311 during 2010 and 2011, respectively.

Presented as BFA Attachment B are the April 30, 2012 internal financial statements of Wayne County Nursing Home. As shown on Attachment B, the facility had a positive working capital position and a positive net asset position through the period April 30, 2012. Also, the facility incurred an operating loss of $1,025,932 through the period April 30, 2012.

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- Wayne County Nursing Home |
| BFA Attachment B | April 30, 2012 Internal Financial Statements of Wayne County Nursing Home |

# Public Health and Health Planning Council

## Project # 121199-C

## At Home Care, Inc.

***County:*** **Otsego (Oneonta)**
***Purpose:*** **Construction**

***Program:*** **Certified Home Health Agency**
***Submitted:*** **April 11, 2012**

## Executive Summary

### Description

At Home Care, Inc., an existing Article 36 not-for-profit corporation, located at 25 Elm Street in Oneonta, currently operates a certified home health agency (CHHA) servicing Chenango, Delaware, Herkimer and Otsego Counties, requests approval to expand its CHHA to provide services in Schoharie 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 application (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHAs. At Home 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.

### DOH Recommendation

Approval.

### Need Summary

The application provided a description of the agency's long standing, extensive continuous quality improvement program with a focus on improving care processes and outcomes.

### Program Summary

At Home Care, Inc. is currently in compliance with all applicable codes, rules and regulations.

### Financial Summary

There are no project costs associated with this application.

| | | |
|---|---|---|
| Incremental Budget: | Revenues: | $ 2,096,367 |
| | Expenses: | 1,963,278 |
| | Gain/(Loss): | $ 133,089 |

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

**October 11, 2012.**

# Need Analysis

## Background

At Home Care, Inc. is an existing not-for-profit corporation approved as a Certified Home Health Agency serving Delaware, Otsego, Herkimer, and Chenango counties. At Home Care, Inc. is requesting approval to expand the service area of their Article 36 Certified Home Health Agency (CHHA) into Schoharie County.

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 would 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 would ensure access to CHHA services in counties with fewer than two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

The At Home Care, Inc. proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. The applicant's plan is to continue their alignment and integration with the Bassett network as ACO models emerge and medical homes and MLTCP's are established. The applicant provided a detailed discussion of the role of their integrated health care delivery system in the facilitation of cost-effective care and services consistent with MRT initiatives. They further

describe existing integrated and coordinated disease management pathways and programs that would extend to the proposed service area.

At Home Care provided comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as on unmet community need. The applicant operates an existing CHHA that has a history of providing consistently high levels of care. At Home Care emphasized their health information technology, electronic medical records, and telehealth systems, along with its membership in the Bassett Healthcare Network as means to improve efficiencies, enhance the continuum of care, control costs and utilization, reduce re-hospitalizations, and enhance quality.

### Recommendation

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

## Programmatic Analysis

### Background

At Home Care, Inc. is an existing not-for-profit corporation that operates an Article 36 certified home health agency with a service area comprising the counties of Delaware, Otsego, Herkimer and Chenango in central New York. Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs, At Home Care, Inc. is seeking approval to expand its service area into contiguous Schoharie County.

At Home Care, Inc. proposes to provide the following home healthcare 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. They also propose to provide telehealthcare to the residents of Schoharie County.

### Recommendation

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

## Financial Analysis

### Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues: | | |
| Commercial | $30,566 | $37,081 |
| Medicare | 1,474,970 | 1,783,853 |
| Medicaid | 219,640 | 259,712 |
| Private Pay | 13,082 | 15,721 |
| Total Revenues: | $1,738,258 | $2,096,367 |
| Expenses: | $1,700,418 | $1,963,278 |
| Net Income: | $37,840 | $133,089 |

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

| | Years One and Three |
|---|---|
| Commercial Fee-for-Service | 2% |

| | |
|---|---|
| Medicare Fee-for-Service | 77% |
| Medicare Managed Care | 2% |
| Medicaid Managed Care | 14% |
| Private Pay | 1% |
| Charity Care | 4% |

Expenses and utilization assumptions are based on historical experience of At Home Care's existing 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 $327,213 based on two months of third year expenses and will be provided through ongoing operations. Presented as BFA Attachment A, is the financial summary of At Home Care, Inc., which indicates the availability of sufficient funds.

The submitted budget indicates a net income of $37,840 and $133,089 for the first and third years, respectively. Revenue is based on current payment rates for certified home health agencies. The budget appears reasonable.

As shown of BFA Attachment A, a financial summary of At Home Care, Inc., indicates that the facility has maintained positive working capital, positive net asset position and generated a net income of $265,918 for 2010 and experienced a net loss of $153,561 in 2011. The reason for the loss was the cost of the facility's conversion of their computer information system to a new provider. Also, all staff required extensive training in the new system, which resulted in temporary decreased productivity. As of April 30, 2012 the facility has generated a net income of $60,056.
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 | Financial Summary At Home Care |
| BFA Attachment B | Internal Financial Summary as of April 30, 2012 |

# Public Health and Health Planning Council

## Project # 121225-C

## Park Ridge at Home

***County:*** **Monroe (Rochester)**
***Purpose:*** **Construction**

***Program:*** **Certified Home Health Agency**
***Submitted:*** **April 17, 2012**

## Executive Summary

### Description

Park Ridge Nursing Home, Inc., which operates a 120-bed not-for-profit residential health care facility (Park Ridge at Home) and long-term home health care program in Monroe County, requests approval for the expansion of services to include a certified home health agency (CHHA) to serve Monroe County. Park Ridge Nursing Home, Inc. is an affiliate of Unity Health System. Unity Health System is a comprehensive, integrated health care delivery system located in Monroe County. The CHHA would provide the following services: nursing, physical therapy, occupational therapy, speech pathology, medical social services, home health aide, homemaker, housekeeper, personal care services, and nutrition and respiratory therapy.

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. Park Ridge Nursing 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 2011-2012 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.

### DOH Recommendation

Approval.

### Need Summary

The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) and on unmet community need. The applicant demonstrated experience in meeting the needs of traditionally underserved populations.

### Program Summary

The applicant currently operates a LTHHCP in Monroe County and has a history of providing consistently high levels of care.

### Financial Summary

There are no project costs associated with this application.

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 20,831,323* |
| | *Expenses:* | *19,494,364* |
| | *Gain/(Loss):* | *$ 1,336,959* |

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

**October 11, 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 would 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 would ensure access to CHHA services in counties with fewer than two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

Park Ridge Nursing Home's proposal described and adequately addressed each of the review criteria used to make determinations for this competitive review. The proposal demonstrated the applicants' organizational capacity to successfully implement the MRT initiatives. Park Ridge Nursing Home is a member of the Unity Health System, which is an integrated health care system with a strong presence in the county. The applicant described how the health care system will provide a seamless system of care for patients transitioning from institutional based care to the home health care setting. Park Ridge describes their experience providing health care to the traditionally medically underserved and how the CHHA will be well equipped to meet the county's present and future home health care needs in an efficient, high quality manner. Unity will partner with MLTCPs that operate in the county and contract with managed care plans and will use these relationships to facilitate the transition of Medicaid recipients from fee-for-

service to managed care. The applicant demonstrated how the CHHA will promote care coordination and improve information transfer across the health care continuum as part of the Unity Health System, including Nursing Home services, Psychiatric and Behavioral Health, and women's health.

The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) and unmet community need. The applicant demonstrated experience in meeting the needs of traditionally underserved populations. The applicant currently operates a LTHHCP in Monroe County and has a history of providing consistently high levels of care. The proposed CHHA will utilize the community relationships established by the LTHHCP for networking, collaboration and professional affiliations. The applicant demonstrated the potential to produce efficiencies in the delivery of home care services through a thorough discussion of strategies to reduce hospital and nursing home admissions and readmissions while improving health care outcomes. Park Ridge intends to establish the CHHA without additional administrative costs by using the administrative structure from existing home and community based programs in the Unity Health System. The application provided a description how the agency will use patient data to implement an ongoing quality assessment and performance improvement program designed to produce measurable, sustained improvement in health outcomes.

### Recommendation

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

## Programmatic Analysis

### Background

Park Ridge Nursing Home, Inc. is an existing not-for-profit corporation which operates a residential health care facility and a long term home health care program (LTHHCP), Park Ridge at Home. Park Ridge at Home is currently authorized to serve patients in Monroe County.

The applicant proposes to establish a new CHHA and serve patients in Monroe County. Park Ridge Nursing Home, Inc. d/b/a Unity CHHA will serve Monroe County from their existing office located at 1555 Long Pond Road, Rochester, New York 14626.

Park Ridge Nursing Home, Inc. d/b/a Unity CHHA 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, speech language pathology, personal care, homemaker, and housekeeper services.

Park Ridge Nursing 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, for the first and third years, which is summarized below:

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | $72,318 | $404,022 |
| Medicaid Managed Care | 38,403 | 214,011 |
| Medicare Fee-for-Service | 1,163,162 | 6,484,434 |
| Medicare Managed Care | 2,184,829 | 12,029,733 |
| Commercial Fee-for-Service | 20,110 | 111,982 |
| Commercial Managed Care | 191,900 | 1,070,739 |

| | | |
|---|---|---|
| Other | 56,695 | 316,268 |
| Private | 35,903 | 200,134 |
| Total Revenues | $3,763,320 | $20,831,323 |
| Expenses | 4,308,724 | 19,494,364 |
| Excess of Revenues over Expenses | $(545,404) | $1,336,959 |

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

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | 1.94% | 1.94% |
| Medicaid Managed Care | 1.02% | 1.02% |
| Medicare Fee-for-Service | 31.13% | 31.16% |
| Medicare Managed Care | 55.84% | 55.72% |
| Commercial Fee-for-Service | .53% | .53% |
| Commercial Managed Care | 5.09% | 5.09% |
| Other | 1.50% | 1.50% |
| Private Pay | .95% | 1.04% |
| Charity Care | 2.00% | 2.00% |

Expense and utilization assumptions are based on the historical experience of other CHHA's in the geographical area.

### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements estimated at $3,471,887, appear reasonable based on two months of third year expenses and will be provided via existing operations of Unity Health System, Inc. and Subsidiaries. Presented as BFA Attachment A are the 2010 and 2011 certified financial statements of Unity Health System, Inc. and Subsidiaries, which indicates the availability of sufficient funds to meet the working capital requirement.

The submitted budget indicates that the applicant will have an excess of revenues over expenses of ($545,404) and $1,336,909 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.

A shown on BFA Attachment A, Unity Health System and Subsidiaries, Inc. had an average positive working capital position and an average positive net asset position from 2010 through 2011, respectively. Also, the entity achieved an average operating excess of revenues over expenses of $26,904,000 from 2010 through 2011.

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

### Recommendation

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

## Attachments

BFA Attachment A Financial Summary for Unity Health System and Subsidiaries, Inc.

# Public Health and Health Planning Council

## Project # 121274-C
## Finger Lakes Visiting Nurse Service, Inc.

***County:*** **Ontario (Geneva)**
***Purpose:*** **Construction**

***Program:*** **Certified Home Health Agency**
***Submitted:*** **April 19, 2012**

## Executive Summary

### Description
Finger Lakes Visiting Nurse Services, Inc. (FLVNS), an existing not-for-profit Article 36 certified home health agency (CHHA) serving Ontario, Wayne and Seneca counties, requests approval to expand their CHHA into Yates County. FLVNS also operates a long-term home health care program approved to serve Seneca, Wayne and Yates counties, and an Article 40 hospice approved to serve Ontario and Yates 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 application (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHAs. Finger Lakes Visiting Nurse Service, 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.

### DOH Recommendation
Approval.

### Need Summary
The FLVNS proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. FLVNS discussed plans for the CHHA to partner with MLTCP's to transition long term home care patients into managed care. The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as unmet community need in Yates County.

### Program Summary
Finger Lakes Visiting Nurse Service, 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:* | *$ 814,789* |
| | *Expenses:* | *366,220* |
| | *Gain/(Loss):* | *$ 448,569* |

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

**October 11, 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 would 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 would ensure access to CHHA services in counties with less than two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

The Finger Lakes Visiting Nurse Services (FLVNS) proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. FLVNS discussed plans for the CHHA to partner with MLTCP's to transition long term home care patients into managed care. The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as on unmet community need in Yates County. FLVNS CHHA has provided assistance to the only existing CHHA in the county in meeting the needs of their patients when the existing CHHA has experienced staffing shortages. FLVNS described their CHHA's ability to meet the needs of the community through the use of telehealth services in the county's rural areas and describes how their telehealth program will enhance access to specialized services, improve coordination of care and provide primary care providers with early identification of concerns or

issues. The applicant has demonstrated experience in operating a CHHA, LTHHCP and Hospice programs. The application provided a description of the agency's longstanding, extensive and continuous quality improvement program with a focus of improving care processes and outcomes.

### Recommendation

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

## Programmatic Analysis

### Background

Finger Lakes Visiting Nurse Service, Inc. is an existing not-for-profit corporation which operates an Article 36 certified home health agency authorized to provide services in the counties of Seneca, Wayne and Ontario, a long term home health care program authorized to provide services in the counties of Seneca, Wayne and Yates and a hospice approved to serve the counties of Ontario and Yates. . Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs, Finger Lakes Visiting Nurse Service, Inc. is seeking approval to expand the service area of the CHHA into Yates County.

Finger Lakes Visiting Nurse Service, Inc. proposes to provide the following home healthcare services: nursing, home health aide, personal care, physical therapy, occupational therapy, speech language pathology, medical social services, nutrition and medical supply, equipment and appliances.

Finger Lakes Visiting Nurse Service, Inc. is currently in compliance with all applicable codes, rules and regulations.

### Recommendation

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

## Financial Analysis

### Operating Budgets

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

| | Year One | Year Three |
|---|---|---|
| Revenues: | | |
| Commercial | 73,554 | 82,379 |
| Medicare | 278,163 | 311,536 |
| Medicaid | 329,687 | 369,249 |
| Private Pay | 46,717 | 51,625 |
| Total Revenues: | 728,121 | 814,789 |
| | | |
| Expenses: | 316,892 | 366,220 |
| | | |
| Net Income: | $411,229 | $448,569 |

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

| | Years One and Three |
|---|---|
| Commercial Fee-for-Service | 16% |
| Medicare Fee-for-Service | 10% |
| Medicare Managed Care | 20% |
| Medicaid Managed Care | 40% |
| Private Pay | 12% |
| Charity Care | 2% |

Expenses and utilization assumptions are based on historical experience of Finger Lakes Visiting Nurse Service's existing 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 $61,037 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 Finger Lakes Visiting Nurse Service, Inc., which indicates the availability of sufficient funds.

The submitted budget indicates a net income of $411,229 and $448,569 for the first and third years, respectively. Revenue is based on current payment rates for certified home health agencies. The budget appears reasonable.

As shown on BFA Attachment A, a financial summary of Finger Lakes Visiting Nurse Service, Inc. indicates that the facility has maintained positive working capital, positive net asset position and generated a net income of $616,728 and $202,060 for 2010 and 2011, respectively.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

### Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Financial Summary, Finger Lakes Visiting Nurse Service, Inc. |
| BFA Attachment B | Internal Financial Summary as of July 31, 2012, Finger Lakes Visiting Nurse Service, Inc. |

# Public Health and Health Planning Council

## Project # 122122-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. is an existing not-for-profit corporation approved as an Article 36 certified home health agency (CHHA) serving Westchester and Putnam Counties. Via this CON, Visiting Nurse Services in Westchester, Inc. (VNSW) is requesting approval to expand their CHHA into the upstate counties of Dutchess and Rockland.

Via CON #121249-C, the Public Health and Health Planning Council contingently-approved Visiting Nurse Services in Westchester, Inc. on August 9, 2012 to serve the downstate county of Bronx.

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.

### DOH Recommendation
Contingent approval.

### Need Summary
The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as on unmet community need. The application described how the agency will use patient data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in health outcomes.

### 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:* | *1,741,574* |
| | *Gain/(Loss):* | *$ 67,622* |

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 of 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 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
**October 11, 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 would 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 would ensure access to CHHA services in counties with fewer than two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

Visiting Nurse Services in Westchester, Inc.'s (VNSW) proposal described and adequately addressed each of the review criteria used to make determinations for this competitive review. The proposal demonstrated the applicants' organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. VNSW has existing contracts with MLTCP's and plans to establish additional relationships to facilitate the transition of Medicaid beneficiaries from fee-for-service programs to Managed Care. VNSW provided information regarding their established relationships and linkages with multiple service provider types within the proposed service area. VNSW demonstrated the potential to produce efficiencies in the delivery of home care services through education and outreach programs utilizing their collaboration with academic institutions and government agencies. They also emphasized their commitment to decrease hospitalizations and re-hospitalizations through

disease prevention programs and the use of telehealth. These programs enable patients to better manage their illness, enjoy a better quality of life and result in significant cost savings from reduced adverse outcomes such as emergency room visits and re-hospitalization.

The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as on unmet community need. The application described how the agency will use patient data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in health outcomes.

The applicant also requested approval to serve the following downstate county: Bronx County. A recommendation for approval for the Downstate county was presented to the Council and approved at the August 9, 2012 meeting.

### Recommendation

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

## Programmatic Analysis

### Background

Visiting Nurse Services in Westchester, Inc. (VNSW) is an existing not-for-profit corporation which operates an Article 36 certified home health agency (CHHA) providing services to the residents of Westchester and Putnam counties. Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs, Visiting Nurse Services in Westchester, Inc. is seeking approval to expand its service area into the downstate county of Bronx and the upstate counties of Dutchess and Rockland. The downstate counties were assigned CON project number 121249 which was approved by the PHHPC on August 9, 2012. This current CON seeks approval for the upstate counties of Dutchess and Rockland.

Visiting Nurse Services in Westchester, Inc. proposes to provide the following home health services: nursing, home health aide, physical therapy, occupational therapy, speech language pathology, medical social services and medical supply, equipment and appliances.

Visiting Nurse Services in Westchester, Inc. is currently in compliance with all applicable codes, rules and regulations.

The applicant has also requested approval to serve the downstate county of Bronx. A recommendation for approval for the downstate counties was presented to the Council and approved at the August 9, 2012 meeting.

### Recommendation

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

## Financial Analysis

### Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| 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 | 116,724 | 175,370 |
| Total Revenues | $1,291,954 | $1,809,196 |

| | | |
|---|---|---|
| Expenses | 1,345,069 | 1,741,574 |
| Excess of Revenues over Expenses | ($53,115) | $67,622 |

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

| | Year One | Year Three |
|---|---|---|
| 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 statement 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 during 2010; and 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.

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 | 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 # 122123-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 Service, Inc. (DSFHS) is an existing not-for-profit corporation which operates an Article 36 certified home health agency (CHHA), long- term home health care program (LTHHCP) and an AIDS home care program. The applicant'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. Via this CON, the applicant requests approval expand its CHHA service area into the upstate counties of Orange, Putnam, and Rockland.

Via CON #121212-C, the Public Health and Health Planning Council contingently-approved DSFHS on August 9, 2012 to serve the downstate counties of Kings, Nassau, New York, Queens, and Richmond.

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.

### DOH Recommendation
Contingent approval.

### Need Summary
The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) and unmet community need. DSFHS demonstrated the potential to produce efficiencies in the delivery of home care services and reduce hospital and nursing home admissions and readmissions through specialized disease centered programs.

### 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:* | *$ 2,148,291* |
| | *Expenses:* | *1,723,615* |
| | *Gain/(Loss):* | *$ 424,676* |

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]

**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
**October 11, 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 would 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 two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

Dominican Sisters Family Health Service, Inc.'s proposal described and adequately addressed each of the review criteria used to make determinations for this competitive review. The proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and provided detailed plans to achieve the goals of the Department in advancing MRT, including the transition of Medicaid beneficiaries from fee-for-service programs to MLTCP's.

Dominican Sisters Family Health Service, Inc. provided information regarding their relationships with existing MLTCP's within the counties they propose to serve. The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) and unmet community need.

Dominican Sisters Family Health Service, Inc. currently operates a CHHA, LTHHCP and AIDS Home Care Program and has a history of providing consistently high levels of care. The applicant demonstrated the potential to produce efficiencies in the delivery of home care services and reduce hospital and nursing home admissions and readmissions through specialized disease centered programs. The application provided a description of how the agency will use patient data to implement an ongoing quality assessment and performance improvement program designed to produce measurable, sustained improvement in health outcomes.

The applicant also requested approval to serve the following downstate counties: Kings, New York, Queens, Richmond and Nassau Counties. A recommendation for approval for the downstate counties was presented to the Council and approved at the August 9, 2012 meeting.

### Recommendation

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

## Programmatic Analysis

### Background

Dominican Sisters Family Health Service, Inc. is an existing not-for-profit corporation which operates an Article 36 certified home health agency, long term home health care program and an AIDS home care program. The applicant's CHHA 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 .

Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs, the applicant is seeking approval to expand its service area into the downstate counties of Kings, Nassau, New York, Queens, and Richmond and the upstate counties of Orange, Putnam, and Rockland.

Dominican Sisters Family Health Service, Inc. proposes to provide the following home healthcare services: home health aide, medical social services, medical supply, equipment and appliances, nursing, 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 has also requested approval to serve the following downstate counties: Kings, Nassau, New York, Queens, and Richmond. A recommendation for approval for the downstate counties was presented to the Council and approved at the August 9, 2012 meeting.

### 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:

| | Year One | Year Three |
|---|---|---|
| Revenues: | | |
| Medicaid | $358,784 | $826,040 |
| Medicare | 495,889 | 1,141,696 |

| | | |
|---|---|---|
| Commercial | 78,422 | 180,555 |
| Total Revenues | 933,096 | 2,148,291 |
| Expenses | 778,964 | 1,723,615 |
| Net Gain(Loss) | 154,132 | 424,676 |

Utilization by payor source for combined programs in the first and third years is as follows:

| Payor | Years One and Three |
|---|---|
| Commercial Managed Care | 10.00% |
| Medicare Fee-for-service | 54.00% |
| Medicaid Managed Care | 34.00% |
| Charity Care | 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 $287,269, 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 $154,132 and $424,676, 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 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 is the internal 2012 financial summary ending May 31, 2012. The applicant continues to maintain negative working capital position a positive net asset position and a negative net income position. The applicant indicates that 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. The other loss through May 2012 that contributed to 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 over the patients to Dominican sisters. Once the program comes back up to full capacity the applicant anticipates that they will again be operating at positive net income.

Based on the preceeding, 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 Dominican Sisters Family Health Services, Inc ( 2011 and 2010) |
| BFA Attachment B | Financial Summary for Dominican Sisters Family Health Services, Inc , May 31, 2012 |

# 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: | *Revenues:* | *$ 6,272,578* |
| | *Expenses:* | *5,902,592* |
| | *Gain/Loss:* | *$ 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
**October 11, 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 that 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 of 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:

| | Year One | Year Three |
|---|---|---|
| Revenues: | | |
| Medicaid | $1,889,040 | $4,662,013 |
| Medicare | 514,443 | 1,406,146 |
| Commercial | 74,788 | 204,419 |
| Total Revenue: | $2,478,271 | $6,272,578 |
| Expenses: | $2,323,457 | $5,902,592 |
| Net Income: | $154,814 | $369,986 |

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

| | Years One and Three |
|---|---|
| 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 in cash and equivalents.

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.

Additionally, Personal Touch utilizes a revolving line of credit of up to $45,000,000 that is secured by its Account Receivable. Generally Accepted Accounting Principles require that when Account Receivable is utilized to provide financing, the money borrowed must be included in current liabilities. This is true even though the agreement does not expire until Deecember 12, 2015. One may note that for an organization of this size ($91 million in total assets and $376 million in net revenues) personal Touch has relatively little long-term debt of $23 million. Further, the company has additional capacitiy to borrow funds under its $45 million revolving line of credit, should it be needed, as just $15.245 million has been utilized ($29.755 million available).

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 |
| BFA Attachment D | April 7, 2012 Memorandum to PHHPC Discussing Financial Factors |

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

# October 11, 2012

## A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

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

**Upstate Certified Home Health Agencies - Construction** **Exhibit #11**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121315 C | Home Aide Service of Eastern New York, Inc.<br>d/b/a Eddy Visiting Nurse Service, Inc.<br>(Rensselaer County)<br>Ms. Hines – Abstained at EPRC | Approval |

# Public Health and Health Planning Council

## Project # 121315-C
## Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nurse Association

***County:*** **Rensselaer (Troy)**
***Purpose:*** **Construction**

***Program:*** **Certified Home Health Agency**
***Submitted:*** **April 20, 2012**

## Executive Summary

### Description
Home Aide Service of Eastern New York, Inc., d/b/a Eddy Visiting Nurse Association, a not-for-profit corporation approved as an Article 36 certified home health agency (CHHA) and long-term home health care program (LTHHCP) serving Albany, Columbia, Greene Rensselaer, and Saratoga counties, requests approval to expand their CHHA into Schenectady 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 certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Eddy Visiting Nurse Association 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.

### DOH Recommendation
Approval.

### Need Summary
The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as on unmet community need. The data and information presented demonstrated that the applicant had an in-depth knowledge of the health needs of the community. The application provided a description of the agency's continuous quality improvement program and its focus on improving care processes and outcomes.

### Program Summary
Home Aide Service of Eastern New York, Inc. d/b/a Eddy Visiting Nurse Association 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:* | *$ 15,993,587* |
| | *Expenses:* | *15,868,035* |
| | *Gain/(Loss):* | *$ 125,552* |

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

**October 11, 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 would 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 would ensure access to CHHA services in counties with less than two 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 that 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

The Home Aide Service of Eastern New York, Inc., d/b/a Eddy Visiting Nurse Association proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. Eddy Visiting Nurse Association is affiliated with St. Peter's Health Partners (SPHP), which was created through the merger of Northeast Health, St. Peter's Health Care Services and Seton Health. SPHP offers a comprehensive network of high quality advanced medical care, primary care, rehabilitation and senior services. Their services and programs include several area Capital District Hospitals, Sunnyview Rehabilitation Hospital in Schenectady, the Eddy System of continuing care and the Community Hospice. This integrated affiliation allows Eddy VNA access to a multitude of resources within SPHP and the opportunity to integrate home health care services across the care continuum.

The applicant described how their expansion will enhance their continuum of care and contribute to the continuity and coordination of care, and strengthen the delivery system to achieve better care for individuals by offering choice and accessibility. SPHP 's affiliation with Eddy SeniorCare/PACE and partnerships with the CDPHP and VNS Choice MLTCP's will facilitate the MRT initiative to shift fee-for-service Medicaid beneficiaries into MLTCP's within the proposed service area. Their EMR system and PACE programs currently maintain a physical presence in Schenectady. Eddy Visiting Nurse Association offers a full range of clinical specialty programs that include chronic disease management, palliative care, telehealth, IV therapy, HIV/AIDS, cardiopulmonary, diabetes, and wound/ostomy/continence in the proposed service area. The existing CHHA's administrative structure will be utilized for the provision of services within the proposed service area, resulting in minimal additional cost.

The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as on unmet community need. The data and information presented demonstrated that the applicant had an in-depth knowledge of the health needs of the community. The application provided a description of the agency's continuous quality improvement program and its focus on improving care processes and outcomes.

### Recommendation

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

## Programmatic Analysis

### Background

Home Aide Service of Eastern New York, Inc. dba Eddy Visiting Nurse Association is an existing not-for-profit corporation which operates an Article 36 certified home health agency and a long term home health care program currently serving Albany, Rensselaer, Saratoga, Columbia and Greene counties . Pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs, the applicant is seeking approval to expand the service area of their CHHA into Schenectady County.

The applicant proposes to provide the following home healthcare services: home health aide, medical social services, medical supply, equipment and appliances, nursing, nutritional, occupational therapy, physical therapy and speech language pathology.

Home Aide Service of Eastern New York, Inc. dba Eddy Visiting Nurse Association 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:

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | $1,198,024 | $1,316,123 |
| Medicaid Managed Care | 33,404 | 18,410 |
| Medicare Fee-for-Service | 221,677 | 8,099,487 |
| Medicare Managed Care | 7,169,230 | 45,821 |
| Commercial Fee-for-Service | 5,531,128 | 6,485,619 |
| Private Pay | 12,306 | 13,386 |
| Charity Care | 13,032 | 14,741 |

| | | |
|---|---|---|
| Total Revenues | $14,178,801 | $15,993,587 |
| Expenses | 14,662,846 | 15,868,035 |
| Net Gain (Loss) | ($484,045) | $125,552 |

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

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | 8.54% | 8.98% |
| Medicaid Managed Care | .23% | .01% |
| Medicare Fee-for-Service | 1.55% | .01% |
| Medicare Managed Care | 46.45% | 48.00% |
| Commercial Fee-for-Service | 42.23% | 42.00% |
| Charity Care | 1.00% | 1.00% |

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 heath team.

### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at $2,644,673, which appears reasonable based on two months of third year expenses. Presented as BFA Attachment A is the certified financial statements of Northeast Health, Inc., 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 ($484,045) and $125,552 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. The first year indicates a planned loss due to start up costs which appear reasonable and can be absorbed from operations.

Presented as BFA Attachment A are the 2010 and 2011 financial statements. 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 operating excess of revenues over expenses of $5,338,000 and $12,096,000 in 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.**

## Attachments

BFA Attachment A Financial Summary for Northeast Health, Inc. and Affiliates

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

# October 11, 2012

## 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 #12**

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

# Public Health and Health Planning Council

## Project # 102376-C

## Albany County Nursing Home

***County:*** **Albany (Albany)**
***Purpose:*** **Construction**

***Program:*** **Residential Health Care Facility**
***Submitted:*** **November 15, 2010**

## Executive Summary

### Description

Albany County Nursing Home, a 250-bed county-owned residential health care facility (RHCF), requests approval to construct a 200-bed replacement facility and certify a 30-slot adult day health care program (ADHCP). The 200-bed facility would consist of 180 RHCF beds and 20 ventilator-dependent beds. Currently, the facility does not consist of any ventilator-dependent beds.

This new facility will be constructed on land adjacent to the existing facility, which has reached the end of its useful life. The County is proposing that this new facility will address deficiencies in the existing building, including a lack of air conditioning, storage space and sprinkler system.

This project had been deferred by the PHHPC from its December 2011 and April 2012 agendas.
On April 5, 2012, the Establishment and Project Review Committee requested that the applicant reassess the cost of its project in light of the two percent real property tax cap legislation and submit an analysis of what the financial impact will be on the facility given the reimbursement system transition to a managed care reimbursement methodology. As a result, the Establishment and Project Review Committee deferred this application until the applicant performs the analysis and submits new budgets demonstrating the capability to operate in a financial feasible manner in a mandatory managed long term care environment. This new reimbursement methodology is to be implemented in 2014. The applicant has submitted revised budgets, which will be discussed in a subsequent section.

Total project costs are estimated at $70,938,554.

### DOH Recommendation

Disapproval.

### Financial Summary

Project costs will be met via General Obligation County Bonds (30 yrs. @ 4.00%).

| | | |
|---|---|---|
| Budget: | *Revenues:* | *$ 26,655,018* |
| | *Expenses:* | *50,813,787* |
| | *Gain/(Loss):* | *$ (24,158,769)* |

The projected operating deficit is proposed to be funded by Albany County.

Given PHHPC members' expressed concerns over the cost and financial feasibility of this project and the applicant's insufficient response to those concerns, disapproval is recommended.

# Recommendations

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

Office of Health Systems Management
**Disapproval.**

Council Action Date
**October 11, 2012.**

# Financial Analysis

## Total Project Cost and Financing

Total project cost, which is for new construction, architect/engineering fees, construction manager fees and the acquisition of moveable equipment, is estimated at $70,938,554, further itemized as follows:

| | |
|---|---|
| New Construction | $47,745,047 |
| Site Development | 3,979,205 |
| Design Contingency | 4,137,408 |
| Construction Contingency | 2,585,649 |
| Architect/Engineering Fees | 3,674,383 |
| Construction Manager Fees | 2,096,687 |
| Moveable Equipment | 2,921,658 |
| Telecommunications | 15,000 |
| Financing Costs | 925,500 |
| Interim Interest Expense | 2,468,000 |
| CON Fee | 2,000 |
| Additional Processing Fee | 388,017 |
| Total Project Cost | $70,938,554 |

Project costs are based on a January 3, 2013 construction start date and a 18-month construction period.

The costs for this project, excluding the CON fees and the additional processing fees, are broken down as follows:

| | |
|---|---|
| Nursing Facility | $69,805,032 |
| Adult Day Health Care Program | 743,505 |

Based on a mid-point of construction in 2013, the Bureau of Architectural and Engineering Facility Planning has determined that the respective costs exceed the construction cap per bed. As a result, the total allowable reimbursement is limited to $55,805,522.

Reimbursable project cost will be $55,805,522, as shown below:

| | |
|---|---|
| Nursing Facility Beds - $268,000 x 180 | $48,240,000 |
| Ventilator Dependent - $268,000 x 1.20% allowance x 20 | 6,432,000 |
| ADHCP Costs | 743,505 |
| CON Application Fee | 2,000 |
| Additional Processing Fee | 388,017 |
| Total Reimbursable Project Cost | $55,805,522 |

The applicant's financing plan appears as follows:

| | |
|---|---|
| General Obligation County Bonds (4.00% for thirty years) | $70,938,554 |

## Operating Budget

The applicant has submitted an operating budget for the whole facility, in 2012 dollars, for the third year after the replacement facility. The budget is summarized below:

Nursing Facility & Ventilator Beds

| | Per Diem | Total |
|---|---|---|
| Medicaid Managed Care (Nursing Facility) | $310.34 | $14,527,788 |
| Medicaid (Ventilator) | 537.47 | 3,269,482 |
| Medicare (Nursing Facility) | 450.01 | 4,213,013 |
| Medicare (Ventilator) | 449.79 | 252,784 |
| Private Pay (Nursing Facility) | 449.96 | 1,404,338 |
| Private Pay (Ventilator) | 600.61 | 174,178 |
| Commercial (Nursing Facility) | 449.96 | 1,404,338 |
| Other | | 659,434 |
| Total Revenues | | $25,905,355 |
| | | |
| Expenses: | | |
| Operating | $651.75 | $45,199,001 |
| Capital | 70.87 | 4,914,926 |
| Total Expenses | $722.62 | $50,113,927 |
| | | |
| Excess of Revenues over Expenses | | ($24,208,572) |
| | | |
| Utilization: (patient days) | | |
| Nursing Facility Patient Days | | 62,416 |
| Ventilator Dependent | | 6,934 |
| Occupancy Nursing Facility | | 95.00% |
| Occupancy Ventilator Dependent | | 94.98% |

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

- The capital component of Medicaid revenues is based on the interest and depreciation reimbursement methodology, which may be impacted in a yet to be determined manner, by the introduction of a managed care setting.
- The case mix index for the nursing facility is .9400 and the case mix index for the ventilator dependent beds is 1.55.
- The applicant provided an analysis of how the implementation of mandatory Medicaid Managed Long Term Care will positively impact the facility. The following assumptions were made by the applicant: rate adjustment for the marketplace (based upon 75% Medicaid occupancy and net 3% increase) $394,200; incentive payment for specialty behavioral unit $525,600; incentive payment for alzheimer's/dementia unit $394,200; CMI change $602,000 and shared savings $192,000.
- The legislation authorizing inter-governmental transfer funding currently expires in 2015 and, therefore, no IGT funding is assumed.

Utilization for the nursing facility beds, broken down by payor source, for the third year after the completion of the replacement facility is as follows:

| | |
|---|---|
| Medicaid Managed Care | 75.00% |
| Medicare Fee-For-Service | 15.00% |
| Commercial Fee-For-Service | 5.00% |
| Private Pay | 5.00% |

Utilization for the ventilator dependent beds, broken down by payor source, for the third year after the completion of the replacement facility is as follows:

| | |
|---|---|
| Medicaid Fee-For-Service | 87.71% |
| Medicare Fee-For-Service | 8.10% |
| Private Pay | 4.19% |

ADHCP

| | |
|---|---|
| Revenues | $749,663 |
| Expenses | 699,860 |
| Excess of Revenues over Expenses | $49,803 |
| Utilization: (visits) | 7,020 |
| Cost Per Visit | $99.69 |

The ADHCP will be 100% Medicaid.

Also, the applicant has projected additional expenses of $7,417,079 for retiree health care costs, which are included within the budget.

The combined revenues and expenses for the facility for the third year are as follows:

| | |
|---|---|
| Revenues | $26,655,018 |
| Expenses | 50,813,787 |
| Excess of Revenues over Expenses | ($24,158,769) |

## Capability and Feasibility

Project costs of $70,938,554 will be met via General Obligation County Bonds at an interest rate of approximately 4.00% for thirty years.

The submitted budget indicates an operating loss of $24,158,769 during the third year after project completion. Revenues are based on projected reimbursement methodologies for Medicaid Managed Care and current reimbursement methodologies for the other payor sources. In regard to the applicant's submission on their managed care assumptions, staff notes that the applicant provided a response as to how they will operate under a mandatory Medicaid Managed Care environment.

The applicant has indicated that incremental expenses will increase by $15,901,681 from the current year (2011) to the third year after project completion. The applicant has indicated that the increases are primarily in the following categories:

- Salaries and wages are increasing by approximately $3,000,000 due to the additional 14.9 FTE's and salary increases.
- Employee Benefits are increasing by approximately $6,000,000 due to the employee benefits for the new hires, trend factor of 1% for employee benefits and retiree health insurance increases by 10% per year.
- Additional accrual of approximately $7,400,000 related to the retiree health care.
- Other direct expenses, which consists of cafeteria and other ancillary expenses, is projected to increase by approximately $700,000.
- Interest expense will increase by approximately $2,400,000 due to the proposed financing.
- Depreciation expense is projected to increase by approximately $1,700,000.

Presented as BFA Attachment A, is a financial summary for Albany County Nursing Home. As shown on Attachment A, the facility had an average positive working capital position and an average negative net asset position from 2009 through 2011. The facility incurred an operating excess expenses over revenues of $18,597,505 during 2011. To

offset the operating loss, the facility received inter-governmental transfer funds of $6,100,000 and County subsidies of $8,755,999 during 2011. The applicant has indicated that the reasons for the loss in 2011 are as follows: the cost of employee benefits and the State Retirement System for employees. As a public facility, Albany County Nursing Home provides a benefit package that exceeds those found in the private sector. The facility administration and County policymakers have taken a number of proactive steps to improve revenues to decrease operational deficits. Those include, but are not limited to: a reduction in staff size of over 100 positions; a reorganization of the therapy department resulting in a nearly 60% increase in Medicare Part A revenues, and more than 100% increase in Medicare Part B revenues; reviewing departmental budgets and adjusting them to be more in line with industry standards; revamping the facility's purchasing system to ensure better monitoring of costs; implementing regular and periodic budget reviews with facility Department heads to ensure both adequate staffing levels as well as cost control, and a reorganization of the facility's MDS and resident assessment process to promote and facilitate a maximization of Medicaid revenues. As previously mentioned, the facility incurred a loss of $18,597,505 in 2011. This application proposes a loss of $24,158,769 during the third year after project completion, which is an incremental loss of $5,561,364 when compared with the 2011 operations. As a result, it does not appear that this application will improve the financial performance of the facility.

When this project was deferred by the PHHPC from its December 2011 and April 2012 agendas, PHHPC members sent a clear message to the applicant that the large projected operating losses was a serious issue. With the new legislation establishing a two percent cap on real property tax increases and the pending implementation of long term care mandatory Medicaid managed care, PHHPC members expressed concern that the subject project was not affordable. At its April 2012 meeting, the PHHPC Establishment and Project Review Committee deferred recommendation on this project, instructing the applicant to reassess its project given the expressed concerns and submit a projected budget indicative of a long term care managed care environment.

Public nursing homes are generally the providers that are expected to care for the most difficult to place individuals in need of residential health care – the providers of last resort. These individuals include people with complex health care and behavioral issues and those who cannot pay for care and cannot qualify for Medicaid. It is not unusual for public nursing homes to run operating deficits for these reasons. County operated facilities have the ability to offset operating deficits through County subsidies and potential tax increases. With documentation of support from the County governing authority, the Department has traditionally accepted the process and mechanisms of "home rule" and found such projects to be financially feasible for the purposes of CON application review. The Albany County Executive and Legislature have provided the Department with letters and board resolutions of support for this project.

The PHHPC members' expressed concerns about the financial aspects of this Albany County Nursing Home project and the EPRC's additional directives to the applicant and the Department require that the Department's financial review includes a more critical assessment of this project's financial factors. In this regard, it seems reasonable to focus on the cost effectiveness of the subject project as reassessed by the applicant and the following is noted:

- Project cost of $70,938,554 exceeds reimbursable project cost by 27%. It's likely that cost efficiencies can be realized through redesign and value-engineering.
- Budgeted revenues are the applicant's estimates of managed care rates with the implementation of long term care Medicaid mandatory managed care and are based on Albany County Nursing Home's managed care rate experience to date. The resulting revenues are slightly greater than previously presented budgets. Department staff's assessment is that the assumed rates are at the high end of what may be considered reasonable.
- Budgeted expenses have not changed from figures presented in December and April and reflect increased staffing for new proposed programs. While specialty staff may well be needed for the proposed vent bed and behavioral units, projected staffing levels are questionable given the reduced certified bed count from 250 beds to 200 beds.
- The projected operating loss is almost 50% of operating expenses and the projected incremental loss of $5,561,364, combined with a loss of $6,100,000 in inter-governmental transfers, creates an incremental budget shortfall that would require an almost two percent increase in the total Albany County operating budget, assuming no other changes.

With its previous project deferral actions, the PHHPC gave the applicant the opportunity to develop a more cost-efficient and sustainable nursing home project, not just for the citizens of Albany County, but for the regional health care system. The applicant's resulting, revised operating budget and project budget are not substantially improved

from those previously presented to PHHPC. As such, it appears that the applicant has not adequately addressed the PHHPC's expressed concerns over financial feasibility in a Medicaid managed care environment and disapproval is recommended.

Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Financial Summary for Albany County Nursing Home |
| BFA Attachment B | Comparison of Projected Operating Budget to April PHHPC Exhibit's Budget |
| BFA Attachment C | Applicant's Assessment of the Impact of Mandatory Managed Long Term Care |

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

# October 11, 2012

## A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121075 C | Jewish Home Lifecare, Manhattan<br>(New York County)<br>Mr. Fassler - Interest | Contingent Approval |

# Public Health and Health Planning Council

## Project # 121075-C
## Jewish Home Lifecare, Manhattan

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

***Program:*** **Residential Health Care Facility**
***Submitted:*** **February 8, 2012**

## Executive Summary

### Description
Jewish Home Lifecare, Manhattan (JHL), a 514-bed not-for-profit residential health care facility (RHCF), requests approval to construct a replacement facility of 414 beds at a new site on 97th Street, and the permanent decertification of 100 RHCF beds from the current complement of 514. The proposed facility will provide an innovative model of care (The Green House model). The replacement facility will consist of 264 Long Term Care beds and 150 sub-acute beds.

The RHCF is a member of the Jewish Home Lifecare System. The current Manhattan Division is comprised of five interconnected buildings constructed between 1894 and 1964. The applicant indicates that these outdated and obsolete structures represent a sprawling institutional structure that presents significant challenges to the applicant's attempts to address operational inefficiencies, quality of life concerns, barriers to socialization and independence, and limitations on privacy.

The nursing home will enter into an arms-length land swap agreement with a developer. JHL would swap its current 106th Street property for the site on 97th Street.

Total project costs are estimated at $251,855,424.

### DOH Recommendation
Contingent approval.

### Need Summary
JHL has had 99% occupancy for 2008, 2009, and 2010. The facility discharges approximately 100 patients per month and will discharge 100 patients 1 month prior to the planned opening of the new facility and will not accept new admissions until the population is stabilized.

| Current | Change | After Completion |
|---|---|---|
| 514 | - 100 | 414 |

This project will also create system efficiencies by decertifying 100 beds in a region that currently has a 94.8% occupancy rate for RHCF beds.

### Program Summary
The rebuilding of Jewish Home will result in a significantly enhanced residential environment. The scale of the nursing home will be reduced, and the program will be more tailored to meet the needs of the residents. The programming of eleven floors to function as "urban green houses" marks the first time this innovative concept of long term care has been extended to a dense city environment in New York State. The modern building design also offers a new approach for fitting larger nursing homes on smaller sites.

A minor program issue remains concerning the provision of rehabilitation services to the residents on the green house floors, to be resolved prior to the submission of final drawings.

### Financial Summary
Project costs will be met via fundraising of $55,685,224; equity (via land swap) of $35,000,000; and taxable GNMA Security Loan (FHA insured) of $161,170,200 (30 yrs. @ 5.5%).

The developer will purchase the existing nursing home site for $35,000,000 and will meet the purchase price via $3,000,000 equity and the remainder of $32,000,000 provided via a loan (5 yrs. @ 7%). The purchaser has provided a bank letter of interest in regard to the financing.

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 100,864,920* |
| | *Expenses:* | *100,052,000* |
| | *Gain/(Loss):* | *$ 812,920* |

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 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 fundraising to be used as a source of financing that is acceptable to the Department of Health. [BFA]
3. 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 within 120 days of receipt from the Department of Health. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. Submission of an executed real estate purchase agreement for the land associated with the replacement facility that is acceptable to the Department of Health. [BFA]
5. Submission of a loan commitment for the purchase of the real estate that is acceptable to the Department of Health. [BFA]
6. Submission and programmatic review and approval of a plan to provide rehabilitation services to the residents of the green house floors. [LTC]
7. Submission and programmatic review and approval of the final floor plans. [LTC]

**Approval conditional upon:**

1. The applicant is required to submit design development drawings, complying with requirements of NCYRR Part 710.4, for review and approval by NYS-DOH bureau of Architecture and Engineering Facility Planning (BAEFP) or their designated representative. [AER]
2. The applicant is required to submit final construction documents, complying with requirements of NCYRR Part 710.7, to NYS-DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [AER]
3. A waiver to be granted concurrent with design development approval specific to alternative cooking facilities in accordance with NFPA 101-2012 18.3.2.5.3 and CMS memorandum S&C-12-21-LSC Dated March 9, 2012. [AER]
4. The applicant shall complete construction by August 1, 2016 in accordance with NCYRR Part 710.2(b)(5) and Part 710.10(a). If construction is not completed on of before that date, this may constitute abandonment of the approval and this approval shall be deemed to be cancelled, withdrawn and annulled without further action from the commissioner. [AER]

## Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

Jewish Home Lifecare, a 514-bed not for profit residential health care facility (RHCF) located at 120 West 106th Street, New York, seeks approval to build a 414-bed replacement facility at 125 West 97th Street, New York, and to decertify 100 RHCF beds.

## Analysis

Jewish Home Lifecare's utilization is higher than New York County's for 2008, 2009, and 2010, as shown in the table below:

| *RHCF Occupancy* | *2008* | *2009* | *2010* |
|---|---|---|---|
| Jewish Home Lifecare | 99.0% | 99.0% | 99.1% |
| New York County | 96.9% | 96.7% | 96.5% |
| New York City Region | 94.5% | 95.0% | 94.8% |

Jewish Home Lifecare operates at 99% occupancy in an area where utilization is at the planning optimum of 97%. The facility discharges approximately 100 patients per month and will discharge 100 patients 1 month prior to the planned opening of the new facility and will not accept new admissions until the population is stabilized.

Additionally, Jewish Home Lifecare has 57 physical A and B patients whose placement in other settings will be enough of a reduction to accommodate the bed reduction that is being requested.

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

## Conclusion

This project will allow Jewish Home Lifecare to build a new facility that meets current trends in residential health care facility construction and allows for a homelike environment for residents that is also energy efficient. This project will also create system efficiencies by decertifying 100 beds in a region that currently has a 94.8% occupancy rate for RHCF beds.

## Recommendation

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

# Programmatic Analysis

## Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | Jewish Home Lifecare, Manhattan | Same |
| *Address* | 120 West 106th Street<br>New York, NY 10025 | 125 West 97th Street<br>New York, NY 10025 |
| *RHCF Capacity* | 514 | 414 |
| *ADHCP Capacity* | 60 | * 60 |

| | | |
|---|---|---|
| *Type Of Operator* | Voluntary | Same |
| *Class Of Operator* | Corporation | Same |
| *Operator* | Jewish Home Lifecare, Manhattan | Same |

**The location for the 60 slot ADHCP has not been determined at this time.*

## Program Review

Jewish Home Lifecare, Manhattan (Jewish Home) is proposing to replace and relocate its 514 bed nursing home. Jewish Home is located on a 2.16 acre site at 120 West 106th Street in Manhattan, and includes five buildings constructed between 1898 and 1964. Jewish Home intends to sell the current site to a private developer in order to fund a modern 414 bed replacement facility, to be located at West 97th Street, on an equivalent parcel conveyed by the developer.

Jewish Home has been engaged in a planning process to transform its portfolio of long term care programs. In November, 2008 Jewish Home received a rightsizing approval to reduce the size of the nursing home by 108 beds, and add adult day health care and long term home health care program slots. Subsequently, Jewish Home submitted a series of CON applications proposing the downsizing and rebuilding of the nursing home, with each encountering significant planning and zoning issues and community opposition. The current application represents the latest iteration of the Jewish Home strategic planning process, with the new the location and design of the building an effort to address the issues which had stalled the earlier projects. The new site is a response to the opposition of neighborhood groups to the previous site, and the new design creates a sleeker building with a somewhat longer, but narrower footprint than the current Jewish Home complex. The resulting design makes for smaller-sized residential floors with reduced nursing units.

The new nursing home proposes to program eleven of its residential floors as “urban Green Houses”, a resident centered alternative to traditional nursing home care. In the Green House model the houses are staffed with universal workers, or “Shabazzim” in Green House terminology, all of whom are certified nursing assistants with additional training in household management, laundry, food preparation and teamwork skills. The Shabazzim work in self-managed work teams, with each shabaz rotating through the various household and care functions and assuming coordinator responsibilities. A clinical support team consisting of nurses, social workers, activities experts, and therapists provides support to each Green House.

The other five floors of beds will be programmed as short term rehabilitation, with the average residential stay generally less than three months. Short term rehabilitation, or sub-acute care, is not a recognized bed category under New York State long term care regulations.

## Physical Environment

The proposed building will rise twenty stories from a site located on West 97th Street between Amsterdam and Columbus Avenues in Manhattan. The replacement nursing home will total 414 beds, with floors 5 thru 8 (short-term rehab) consisting of 30 beds each, and floors 11 thru 20 (green house) consisting of 24 beds each, arrayed into 12 bed urban green houses. The short-term rehab floors will include 24 single bedrooms and 4 double bedrooms with room partitions. All of the resident rooms will include a bathroom with a European-type shower and a ceiling-mounted lift system affording full handicap accessibility. Since the design embraces individual showers in every bedroom, the need for a central shower or tub room on each floor is eliminated. As an additional amenity, a full whirlpool tub is available to residents in the spa room located on the second floor, which also offers massage and beauty salon services.

The short term rehab floors are configured as a traditional rectangular unit with the resident rooms situated on the outside walls and the interior core containing the elevator bank and staff work area. Four double bedrooms are located on the corners of the floor, and include partitions which separate the beds, but do not prevent access to outside light for each of the residents. The remaining 22 beds are all located in single bedrooms. A 30-space dining area is located on the north side of the building, and a rehabilitation/ADL training room at the opposite end. Twin lounges are located opposite the dining room and rehab room.

The green house floors have a similar configuration, with 12 single bedrooms running the length of the east and west sides of the unit. The three passenger elevators open into a lobby, with the floor then divided into north and south “urban green houses”. Consistent with the Green House model, each nursing unit includes a central Hearth Room

with electric fireplace, which functions as a multi-purpose space for activities and recreation. The central living area also includes a large dining table where residents can sit and enjoy meals served family style, with staff preparing the meals in the adjacent kitchen and pantry. Opposite the central living area is a screened porch and a den, which provide additional activity and socialization space for the residents. The staff work area with medication closet is located on the other side of the porch, and storage rooms are interspersed in several areas on the unit. Significant storage is available for all the nursing units in the basement area, accessed by the service elevator in the central elevator bank.

Due to the unique nature of the design, the nursing home does not have a central rehabilitation suite. Rehabilitation and ADL training rooms are located on each of the four short term rehab units for use by residents on the floor; however an equivalent rehabilitation area for the residents of the green house floors is not identified. The applicant has stated that therapy will take place in the individual resident rooms; however additional information will be required describing the rehabilitation service for the green house floors.

The lower three floors of the building will contain offices, industrial and service functions, and resident amenities. The basement area includes staff and nurse lounges, staff lockers and shower rooms, and a staff gym. Food storage, including walk-in freezers and a separate kosher food storage area, as well as general housekeeping, medical and equipment storage are also in the basement. The first floor contains the main entrance with reception area, and a large lobby with an aquarium on one wall. The loading dock and ambulette entrance are also on this floor. The second floor features activity and recreational space including a library, a bistro, a boutique and a large multipurpose room, along with the aforementioned "spa" room. Classrooms, geriatric development and clergy offices are also located on the floor. The third floor is principally composed of offices, including administration and human resources offices, medical and dental exam rooms, and the pharmacy.

### Compliance

Jewish Home Lifecare, Manhattan is currently in substantial compliance with all applicable codes, rules and regulations.

### Conclusion

The rebuilding of Jewish Home will result in a significantly enhanced residential environment. The scale of the nursing home will be reduced, and the program will be more tailored to meet the needs of the residents. The programming of eleven floors to function as "urban green houses" marks the first time this innovative concept of long term care has been extended to a dense city environment in New York State. The modern building design also offers a new approach for fitting larger nursing homes on smaller sites.

A minor program issue remains concerning the provision of rehabilitation services to the residents on the green house floors, to be resolved prior to the submission of final drawings.

### Recommendation

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

## Financial Analysis

### Real Estate Purchase Agreement

The applicant has submitted real estate purchase agreements for the sale of the existing nursing home property (executed) and the sale of the property that the replacement facility will be located (draft), which is summarized below:

Existing Nursing Home Site

| | |
|---|---|
| *Date:* | Effective as of July 29, 2011 |
| *Seller:* | Collectively, 156 West 106th Street Holding Corp. (JHA) successor by merger to J.H.A Housing Corporation and 102 West 107th Street Corp. (102W107). |
| *Purchaser:* | PMV Owner, LLC |
| *Address:* | JHA is the owner of certain property and improvements known as 111-143 West 105th Street and 156 West 106th Street and 102W107 is the owner of certain |

| | |
|---|---|
| | property and improvements known as 102 West 107th Street, New York. |
| *Purchase Price:* | $35,000,000 |
| *Payment of Purchase Price:* | Down payment of $3,000,000 to be held in Escrow. The remainder, $32,000,000, will be delivered to the Escrow Agent at the First Closing. |
| *First Closing:* | The conveyance of title to the PMV Property by PMV to JHH or its designee and the closing, completion and consummation of all other transactions required to be closed, completed and consummated on the First Closing Date. |
| *Second Closing:* | The conveyance of title to the JHH Campus by JHA (or such affiliate of JHH then owning the JHH Campus) to PMV's designee, and the closing, completion and consummation of all other transactions required to be closed, completed and consummated on the Second Closing Date.<br><br>At the second Closing, JHA will convey the JHH Campus to PMV's designee, subject to the lien of the 106th Street Mortgage and JHH has not, on or before the Second Closing, moved all of its residents out of the JHH Campus, PMV will lease the JHH Campus back to JHH upon the terms and conditions set forth in the 106th Street Lease. The Second Closing Date means the date of the Second Closing, to be fixed by written notice from JHH to PMV, and which shall occur no later than one hundred and eighty (180) days after both; JHH receives a temporary certificate of occupancy for the New Facility and JHH's existing facility located on the JHH Property has been vacated; unless adjourned by written agreement of PMV and JHH or otherwise pursuant to this agreement, but in no event later than the outside date. The outside date is seven years after applicant receives Department of Health approval. |

The purchaser will finance $32,000,000 via a bank loan at an interest rate of 7% for a five year term. The purchaser provided a bank letter of interest in regard to the financing.

Proposed Nursing Home Site

| | |
|---|---|
| *Seller:* | PMV Owner, LLC and PMV Acquisition, LLC |
| *Purchaser:* | Jewish Home Lifecare Development Corp. |
| *Premises:* | Located in the Borough of Manhattan and as and by the street addresses 107 W.97th Street/784 Columbus Avenue, 120 W.100th Street/792 Columbus Avenue and 788-790 Columbus Avenue, New York. |
| *Purchase Price:* | $0 |

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the existing site that they will lease in the event the applicant has not on or before the Second Closing moved all of its residents out of the JHH Campus. This lease will go into effect seven years after the Department of Health approves this project. The terms of the lease are summarized below:

| | |
|---|---|
| *Premises:* | The existing site for the nursing home of Jewish Home Lifecare, Manhattan located at 111-143 West 105th Street and 156 West 106th Street, New York. |
| *Landlord:* | PMV Owner, LLC |
| *Tenant:* | Jewish Home Lifecare, Manhattan |
| *Expiration Date:* | Shall mean the earlier of July 29, 2021 or one hundred eighty (180) days after Tenant moves the final residents from the premises or any other earlier date upon which tenant surrenders the premises to landlord and terminates this lease, provided the premises is then free of residents. |
| *Rental:* | Interest on the 106th Street Mortgage plus the real estate taxes assessed upon and payable for the premises. |

## Total Project Cost and Financing

Total project cost for new construction and the acquisition of moveable equipment, is estimated at $251,855,424, itemized as follows:

| | |
|---|---|
| New Construction | $167,857,702 |
| Temporary Utilities | 392,000 |
| Design Contingency | 16,785,770 |
| Construction Contingency | 8,412,485 |
| Architect/Engineering Fees | 11,209,000 |
| Construction Manager Fees | 3,308,000 |
| Other Fees (Consultant) | 3,868,000 |
| Moveable Equipment | 9,514,640 |
| Telecommunications | 3,668,677 |
| Financing Costs | 14,009,733 |
| Interim Interest Expense | 11,449,800 |
| CON Fee | 2,000 |
| Additional Processing Fee | 1,377,617 |
| Total Project Cost | $251,855,424 |

Project costs are based on a February 1, 2014 construction start date and a thirty month construction period. Based on a midpoint of construction in 2015, the Bureau of Architectural and Engineering Facility Planning has determined that the costs exceed the appropriate cost caps by $147,014 per bed. As a result, reimbursable project cost will be limited to $190,991,617.

Financing for the total project is as follows:

| | |
|---|---|
| Fundraising | $ 55,685,224 |
| Equity (via land swap) | 35,000,000 |
| Taxable GNMA security loan (FHA insured) (5.5% for thirty years) | 161,170,200 |

The applicant has submitted a comparison of tax-exempt financing versus taxable financing and as a result it shows that taxable financing is less expensive by approximately $20,400,000 on a present value basis. The applicant has submitted a letter of interest reflecting an interest rate of 5.5% for a Taxable GNMA Security Loan (FHA insured). The applicant has indicated that the current interest rate for a Taxable GNMA Security Loan (FHA insured) is 3.50% as of 7/2//2012 in a competitive market.

The Department of Health has determined that reimbursement should be allowed 85% of the allowed reimbursable project cost for reimbursement purposes instead of the 75% reimbursement limit, due to the applicant's decertification of 100 beds.

## Operating Budget

The applicant has submitted an operating budget for the RHCF, LTHHCP and the ADHCP component, in 2012 dollars, for the third year subsequent to the construction of the replacement facility, summarized as follows:

RHCF

| | Per Diem | Total |
|---|---|---|
| Revenues: | | |
| Medicaid FFS | $375.31 | $16,314,725 |
| Medicaid Managed Care | $375.31 | 2,506,320 |
| Medicare FFS | $613.83 | 32,299,524 |
| Medicare Managed Care | $413.00 | 5,390,476 |
| Commercial Managed Care | $500.00 | 1,832,000 |
| Private Pay | $625.00 | 18,821,875 |
| Total Revenues | | $77,164,920 |

| | | |
|---|---|---|
| Expenses: | | |
| Direct | $254.67 | $38,099,000 |
| Indirect | 144.54 | 21,623,000 |
| Non Comparable | 19.22 | 2,875,000 |
| Capital | 115.99 | 17,352,000 |
| Total Expenses | $534.42 | $79,948,000 |
| | | |
| Excess of Revenues over Expenses | | $(2,783,080) |
| | | |
| Utilization: (patient days) | | 149,599 |
| Occupancy | | 99.00% |

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

- The Medicaid capital component assumes reimbursement on interest ($8,810,173) and depreciation ($5,932,087) associated with the reimbursable project cost. The applicant assumed the reimbursable project cost. The applicant assumed the reimbursable project cost in their capital component.

- Budgeted case mix of 1.12 is an increase of .07 from historical experience. The reason for the increase is the larger proportion of rehabilitative care beds in the new facility, which have a higher case mix intensity than the RHCF beds.

- Medicare, Private Pay and other revenues assume current rates of payment.

- Occupancy is projected at 99.00%, consistent with historical experience. In Year three, the facility will be at full occupancy.

- Utilization by payor source is projected as follows:

| | |
|---|---|
| Medicaid FFS | 29.06% |
| Medicaid Managed Care | 4.46% |
| Medicare FFS | 35.18% |
| Medicare Managed Care | 8.72% |
| Private Pay | 20.13% |
| Managed Care | 2.45% |

  This represents a significant change from historical payor mix that relates to the increased proportion of rehabilitative beds to residential RHCF beds.

LTHHCP

| | |
|---|---|
| Revenues | $ 16,545,000 |
| Expenses | 15,299,000 |
| Excess of Revenues over Expenses | $ 1,246,000 |
| | |
| Visits | 36,555 |
| Hours | 667,368 |

Utilization by payor source for the LTHHCP will be as follows:

| | |
|---|---|
| Medicaid | 90.71% |
| Medicare | 9.29% |

ADHCP

| | |
|---|---|
| Revenues | $ 5,733,000 |
| Expenses | 4,805,000 |
| Excess of Revenues over Expenses | $ 928,000 |
| | |
| Visits | 23,022 |
| | |
| Other Revenues (Contributions) | $1,422,000 |

The combined projected revenues and expenses for Jewish Home Lifecare, Manhattan for the third year subsequent to the replacement facility are as follows:

| | |
|---|---|
| Revenues | $100,864,920 |
| Expenses | 100,052,000 |
| Excess of Revenues over Expenses | $ 812,920 |

Capability and Feasibility

Project costs of $251,855,424 will be met as follows: Fundraising of $55,685,224; Equity (via land swap) $35,000,000 and a Taxable GNMA security loan (FHA insured) for $161,170,200 at an interest rate of 5.5% for thirty years. The applicant provided a letter of interest for the loan at an interest rate of 5.5% for thirty years. As of this date, the applicant has received fundraising pledges of $22,508,413, of which $9,298,289 in cash has been received. As a contingency of approval, the applicant must provide documentation of receipt of fundraising proceeds.

The submitted budget indicates an excess of revenues over expenses of $812,920 during the third year subsequent to the construction of the replacement facility. Following is a comparison of historical (2011) and projected revenues and expenses.

| | |
|---|---|
| 2011 Operating Revenues | $106,556,279 |
| 2011 Operating Expenses | 104,417,875 |
| 2011 Operating Excess of Revenues over Expenses | $ 2,138,404 |
| | |
| Incremental Income | $(5,691,359) |
| Incremental Expense | $(4,365,875) |
| Net Incremental Income | $(1,325,484) |
| | |
| Projected Excess of Revenues | $812,920 |

Incremental income includes the increase in revenues associated with the revised payor mix and adjustments in revenue due to new bed configuration. The applicant has projected that the non-operating revenue will decrease by $4,795,000 due to the following factors: transfer of fixed assets to and from the following related organizations were a one-time item that are not planned to occur in the future; adjustment for pension is a year end adjustment that depends upon discount rates at that time; change in beneficial interest in related organizations represent the capital campaign that will cease when the project is operational, and transfer from related organizations and interest income are unpredictable and therefore, not projected. Also, the applicant projected reduction in revenues associated with LTHHCP and ADHCP due to the impact of managed care. Incremental expenses include interest and depreciation related to the replacement facility and staffing adjustments associated with the new bed configuration. Budgeted net income 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, and contingent approval is recommended.

Recommendation

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

## Attachments

BFA Attachment A Financial Summary for Jewish Home Lifecare, Manhattan

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

# October 11, 2012

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct** **Exhibit #14**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121104 B | AMSC, LLC d/b/a All Surg (Bronx County) | Contingent Approval |
| 2. | 121403 B | Union Square SC, LLC (New York County) | Contingent Approval |

**Diagnostic and Treatment Center – Establish/Construct** **Exhibit #15**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121354 E | Hillside Polymedic Diagnostic and Treatment Center (Queens County) | Approval |
| 2. | 121355 E | A Merryland Operating, LLC d/b/a Mermaid Health Center (Kings County) | Contingent Approval |
| 3. | 122001 E | Beacon Christian Community Health Center (Richmond County) | Approval |

**Residential Health Care Facilities – Establish** **Exhibit 16**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 121481 E | Haym Solomon Home for the Aged<br>(Kings County) | Contingent Approval |

**Certificate of Incorporation** **Exhibit #17**

| | Applicant | E.P.R.C. Recommendation |
|---|---|---|
| 1. | Betty's Be Brave Foundation, Inc. | Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 2169 L | Greene County Public Health Nursing Service<br>(Greene County) | Contingent Approval |

# Public Health and Health Planning Council

## Project # 121104-B

## AMSC, LLC
## d/b/a All-Surg

***County:*** **Bronx (Bronx)** ***Program:*** **Ambulatory Surgery Center**
***Purpose:*** **Establishment and Construction** ***Submitted:*** **February 28, 2012**

## Executive Summary

### Description

AMSC, LLC d/b/a All-Surg, an existing limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) that will be certified as a multi-specialty freestanding ambulatory surgery center (FASC). The proposed FASC will lease space on the third floor and basement level of a three-story building located at 951 Brook Avenue, Bronx. The facility will include four operating rooms, along with requisite support areas.

The applicant states they will take steps to become a provider in the Bronx Accountable Healthcare Network and become a member of Accountable Care Organizations that form to provide services to Bronx residents.

AMSC, LLC states that they are committed to seeking certification from one of following: Joint Commission on Accreditation of Healthcare Organization (JCAHO), Accreditation Association for Ambulatory Health Care (AAAHC) or the American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF) within two years of becoming operational.

The proposed members of AMSC, LLC d/b/a All-Surg and their ownership interest are as follows:

| *Proposed Members* | *Interest* |
|---|---|
| Abdo Balikcioglu, M.D. | 40% |
| Billy Ford, M.D. | 10% |
| Robert Slingsby | 25% |
| Joshua Schwartz | 25% |

The applicant states that Robert Slingsby is a member of RJZM, LLC d/b/a All-Med & Rehabilitation of New York, an Article 28 D&TC that was established under CON #982540-B as the operator of a multi-specialty FASC in the Bronx with an extension clinic site in Queens.

In response to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area, objections were received from Lincoln Medical & Mental Health Center. The Department does not find the comments submitted sufficient to warrant reversal or modification of the recommendation for contingent approval.

Total project costs are estimated at $1,112,412.

### DOH Recommendation

Contingent approval, with an expiration of the operating certificate five years from the date of its issuance, should the operator not comply with the conditions of approval granted this CON.

### Need Summary

AMSC, LLC proposes to provide the orthopedic, podiatric, general, urology, gynecology, and gastroenterology surgery services as well as pain management. It is projected that there will be 9,033 visits in the first year and 9,583 in year 3.

### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary

Project costs will be met with $111,242 in member's investment and a $1,001,170 capital equipment lease with AccuLease, carrying payment terms of five years at a 7.82% interest rate.

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 4,755,439* |
| | *Expenses:* | *4,159,362* |
| | *Gain/(Loss):* | *$ 596,077* |

Subject to the noted contingencies, 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 with an expiration of the operating certificate five years from the date of its issuance is recommended contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed equipment lease that is acceptable to the Department. [BFA]
5. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
6. The Articles of Organization must include a provision describing how the LLC will be managed and stating that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the Department. [CSL]
7. The Articles of Organization must further provide that, notwithstanding anything in the Articles of Organization or the Operating Agreement to the contrary, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with Public Health Law Section 2801-a(4)(b). [CSL]

**Approval conditional upon:**

1. The submission of a CON or other licensing extension application required by the Department prior to expiration date of the operating certificate issued pursuant to this CON, seeking extension of the operating certificate of the ambulatory surgery center. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

## Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

AMSC, LLC (d/b/a All-Surg) seeks to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty freestanding ambulatory surgery center (FASC) with four (4) operating rooms. It will be located at 951 Brook Avenue, Bronx, 10451, in Bronx County.

## Analysis

AMSC, LLC will serve Bronx County.

The procedures that are proposed for AMSC, LLC are currently being performed in office based settings or other ambulatory surgery centers.

There are currently two free standing multi specialty ambulatory surgery centers and one multi specialty ambulatory surgery center extension clinic in Bronx County (HFIS).

Montefiore Medical Center, which is located 4.4 miles and 17 minutes driving time from the proposed ambulatory surgery center, will provide back-up support services for AMSC, LLC.

The proposed ambulatory surgery center is located in a health professional shortage area (HPSA) for the following services, as shown:

Primary Care Services: Morrisania
Mental Health Services: Homeless-West Central Bronx
Dental Health Services: Southwest Bronx-Medicaid

The Morrisania service area is also designated as a medically underserved population/area.

The applicant has provided an organizational mission statement and a statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws with consultation of the legal counsel. These statements are acceptable to the Department.

## Conclusion

The proposed ambulatory surgery center will provide patients with a variety of surgical services and will have a total 9,033 visits in the first year and 9,583 in year 3.

## Recommendation

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

# Programmatic Analysis

## Project Proposal

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

| **Proposed Operator** | **AMSC, LLC** |
|---|---|
| Operator Type | Limited Liability Corporation |
| Doing Business As | All-Surg |
| Site Address | 951 Brook Avenue<br>(Third Floor and Basement)<br>Bronx, NY 10451 |
| Surgical Specialties | Orthopedic Surgery, Podiatric Surgery, General Surgery, Urology, Gynecology, Gastroenterology, and Pain Management |
| Operating Rooms | 4 |

| | |
|---|---|
| Procedure Rooms | 0 |
| Hours of Operation | Monday through Friday from 6:00 am to 6:00 pm (Extended as necessary to accommodate patient needs). |
| Staffing (1st Year / 3rd Year) | 26.5 FTEs / 28.5 FTEs |
| Medical Director(s) | Abdo Balikcioglu, MD |
| Emergency, In-Patient and Backup Support Services Agreement and Distance | Expected to be provided by Montefiore Medical Center 4.4 Miles and 17 minutes driving time away. |
| On-call service | Access to the facility's on-call physician during hours when the facility is closed. |

## Character and Competence

The members of the LLC are:

| **Name** | **Interest** |
|---|---|
| Abdo Balikcioglu, MD | 40% |
| Billy Ford, MD | 10% |
| Robert Slingsby | 25% |
| Joshua Schwartz | 25% |

Dr. Abdo Balikcioglu is a gastroenterologist in private practice.

Dr. Billy Ford is an anesthesiologist in private practice.

Robert Slingsby is the Chief Operating Officer of RJZM, LLC which operates All-Med and Rehabilitation of New York, an existing Article 28 Diagnostic and Treatment Center.

Joshua Schwartz is a Vice President at All-Med and Rehabilitation of New York.

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.

## Integration with Community Resources

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

The Facility will be aligning with an existing D&TC (All-Med and Rehabilitaion of New York), with two (2) sites in the Bronx, to ensure continuity of care and access to primary care

The operating budget for this project projects that 51% of its visits are expected to be for individuals covered by Medicaid. The applicant is also committed to the development of a formal outreach program directed to members of the local community, including local physicians.

The facility commits to becoming a network provider in the provider-led health homes designated by NYSDOH for Bronx County and the surrounding counties and will consider joining any Accountable Care Organization (ACO) that is formed in (or for providers in) Bronx county.

The facility plans to implement an EMR system.

The facility will investigate the potential of joining a RHIO, given the importance placed on linkages with RHIOs by NYSDOH.

### Compliance with Applicable Codes, Rules and Regulations

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

### Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site, the terms of which are summarized below:

| | |
|---|---|
| *Dated:* | January 9, 2012 |
| *Premises:* | 12,000 gross square feet located at 951 Brook Avenue, Bronx, New York |
| *Landlord:* | MBX Acquisition Holdings, LLC |
| *Lessee:* | AMSC, LLC d/b/a All-Surg |
| *Term:* | 10 years at $516,000 ($43.00 sq. ft.) plus a 4% increase each year after the first year. Renewal option one 10-year term |
| *Provisions:* | Utilities, Taxes, Maintenance and Insurance |

The applicant states that the lease is a non-arm's length arrangement as the following individuals are both members of the landlord (MBX Acquisition Holdings, LLC) and the applicant (AMSC, LLC): Abdo Balikcioglu, M.D., Robert Slingsby, and Joshua Schwartz. Realtor letters have been provided attesting to the rental rate being of fair market value.

According to the applicant, the home of the proposed site was purchased by MBX Acquisition Holdings, LLC (landlord) in December 2010 for $1,300,000, and it is estimated that renovating the entire 26,000 square foot structure will cost the landlord slightly over $5,000,000.

### Total Project Costs And Financing

Total project cost for the acquisition of moveable equipment is estimated at $1,112,412, itemized as follows:

| | |
|---|---|
| Other Fees | $24,000 |
| Movable Equipment | 1,080,338 |
| CON Application Fee | 2,000 |
| CON Processing Fee | 6,074 |
| Total Project Cost | $1,112,412 |

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

The applicant's financing plan appears as follows:

| | |
|---|---|
| Cash Equity (Applicant) | $111,242 |
| Equipment lease (5-year term, 7.82%) | 1,001,170 |
| Total | $1,112,412 |

A letter of interest for leasing moveable equipment has been provided by AccuLease.

## Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues | $4,482,457 | $4,755,439 |
| Expenses: | | |
| Operating | $3,219,609 | $3,407,566 |
| Capital | 741,239 | 751,796 |
| Total Expenses | $3,960,848 | $4,159,362 |
| Net Income or (Loss) | $521,609 | $596,077 |
| Utilization: (procedures) | 9,033 | 9,583 |
| Cost Per Procedure | $438.49 | $434.04 |

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

| | |
|---|---|
| Medicaid Fee-for-Service | 13.12% |
| Medicaid Managed Care | 37.66% |
| Medicare Fee-for-Service | 19.48% |
| Commercial Fee-for-Service | 14.93% |
| Commercial Manage Care | 10.39% |
| Private Pay | 2.21% |
| Charity | 2.21% |

Utilization and expense assumptions were based on the applicant's experience in operating an article 28 FASC, along with input from the proposed participating physicians. The applicant has submitted eleven physician's referral letters in support of the utilization projections, and has calculated the breakeven point to be approximately 88% of first and third year budgeted procedures.

The FASC will offer the following services: Orthopedic Surgery, Podiatric Surgery, General Surgery, Urology, Gynecology, Gastroenterology, and Pain Management.

## Capability and Feasibility

The total project cost of $1,112,412 will be satisfied by the proposed members contributing $111,242 from their personal resources and entering into a capital equipment lease with AccuLease for $1,001,170 at the above stated terms.

Working capital requirements are estimated at $693,228, which appears reasonable based on two months of third year expenses. Half of the working capital or $346,614 will be contributed by the members with the remaining $346,614 being borrowed from TD Bank for five years at a 4% fixed rate of interest. Presented as BFA Attachment A is the member's statement of personal net worth, which indicates the ability to meet both the equity and working capital requirements. Presented as BFA Attachment B is AMSC, LLC d/b/a All-Surg pro-forma balance sheet that shows operations will start off with $457,856 in positive equity.

AMSC, LLC projects an operating excess of $521,609 and $596,077 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on estimates. The budget appears reasonable.

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

Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Personal Net Worth Statement for the Proposed Member of AMSC, LLC d/b/a All-Surg |
| BFA Attachment B | Pro-forma Balance Sheet of AMSC, LLC d/b/a All-Surg |

## Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** Bronx-Lebanon Hospital Center
Concourse Division
1650 Grand Concourse
Bronx, New York 10457

No response.

**Facility:** St. Barnabas Hospital
4422 Third Avenue
Bronx, New York 10457

No response.

**Facility:** Lincoln Medical & Mental Health Center
234 East 149th Street
Bronx, New York 10451

| Current OR Use | Surgery Cases | | Ambulatory Cases by Applicant Physician | Reserved OR Time for Applicant Physician |
|---|---|---|---|---|
| | **Ambulatory** | **Inpatient** | | |
| 82%[1] | 10,147 | Not Provided | None | None |

[1] Utilization for eight OR's. Facility also operates three GI and two GU procedure rooms.

Lincoln Medical and Mental Health Center opposes the application. The hospital predicts that the proposed ASC would have negative ramifications on Lincoln and could jeopardize its financial stability. The hospital states that in 2011 it generated $4.6 million from 1,296 ambulatory surgical procedures from Zip code 10451, where Lincoln stands and where the proposed ASC would be located. The hospital states that the location of an ASC in such close proximity makes it likely that Lincoln would lose surgical referrals from community physicians. These and other losses within its catchment area could reduce the revenues from ambulatory surgery that help the hospital to support more than 600,000 outpatient and emergency room visits. Lincoln's ambulatory surgery payor mix is $40.5% Medicaid HMO, 20.5% self-pay and 8.7% Medicaid.

The hospital acknowledges that none of the physicians slated to practice at the proposed ASC currently perform surgery at Lincoln.

## Supplemental Information from Applicant

- Need and Sources of Cases

The source of cases will be those currently being performed in the offices of the 11 physicians who have committed to perform cases at the proposed ASC. The applicant also states that the proposed facility will be aligned with All-Med & Rehab of New York (All-Med), an affiliated existing diagnostic and treatment center with two sites in the Bronx and one site in Queens. This association will help ensure continuity of care and access to primary care for All-Surg's patients and will help facilitate access to surgical procedures by All-Med's clientele. The applicant also believes that recognition of the higher quality of services at certified facilities will cause patients and insurers to prefer the services of the proposed ASC as opposed to office-based practices.

- Office-Based Cases

All of the projected procedures for the proposed ASC are currently performed in an office-based setting. The applicant states that cases that are more appropriately performed in a general hospital setting will continue to be performed at the area hospitals where the applicant physicians are credentialed.

- Staff Recruitment and Retention

The applicant states that initial recruitment will be of selected staff currently employed by the member physicians in their private practices, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

## OHSM Comment

Although one hospital in the area of the proposed ASC expressed opposition to the application, the fact that none of the physicians who intend to operate at the facility currently operate at the hospital renders the hospital's prediction of lost cases and revenues speculative and provides no basis for reversal or modification of the recommendation for contingent approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct an Article 28 D&TC that will be certified as a multi-specialty freestanding ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY/APPLICANT: |
|---|---|
| 121104 B | AMSC, LLC d/b/a All Surg |

APPROVAL CONTINGENT UPON:

**Approval with an expiration of the operating certificate five years from the date of its issuance is recommended contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed equipment lease that is acceptable to the Department. [BFA]
5. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
6. The Articles of Organization must include a provision describing how the LLC will be managed and stating that neither the management structure nor the provision setting forth such structure may be deleted, modified or amended without the prior approval of the Department. [CSL]
7. The Articles of Organization must further provide that, notwithstanding anything in the Articles of Organization or the Operating Agreement to the contrary, transfers, assignments or other dispositions of membership interests or voting rights must be effectuated in accordance with Public Health Law Section 2801-a(4)(b). [CSL]

APPROVAL CONDITIONAL UPON:

1. The submission of a CON or other licensing extension application required by the Department prior to expiration date of the operating certificate issued pursuant to this CON, seeking extension of the operating certificate of the ambulatory surgery center. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. 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 # 121403-B

## Union Square SC, LLC

***County:*** **New York (New York)** ***Program:*** **Ambulatory Surgery Center**
***Purpose:*** **Establishment and Construction** ***Submitted:*** **May 23, 2012**

## Executive Summary

### Description

Union Square SC, LLC., a to-be-formed limited liability company, requests approval to establish and construct a single-specialty freestanding ambulatory surgery center (FASC) specializing in orthopedic procedures. The FASC will be located in leased space at 27 West 20th Street, New York, on the first and second floors of the building. The applicant proposes to provide orthopedic surgery using four operating rooms.

This application will consolidate several private medical practices and Beth Israel Medical Center (BIMC) physicians. Upon approval, the applicant will change its name to Union Square Surgery Center, LLC. The proposed members are as follows:

| | |
|---|---|
| Beth Israel Ambulatory Care Services Corp. | 67.500% |
| Metro Bloom, LLC | 10.000% |
| Steven Arsht, MD | 1.731% |
| Steven Beldner, MD | 1.731% |
| Catherine Compito, MD | 1.731% |
| Jonathan Gordon, MD | 1.731% |
| Christopher Hubbard, MD | 1.731% |
| Jerry Lubliner, MD | 1.731% |
| Peter McCann, MD | 1.731% |
| Debra Parisi, MD | 1.731% |
| Kevin Plancher, MD | 1.731% |
| Debra Polatsch, MD | 1.731% |
| Vladimir Shur, MD | 1.731% |
| Max Tyorkin, MD | 1.731% |
| Robert Ziets, MD | 1.731% |

The applicant will enter into a development agreement and an administrative services agreement with Metro Bloom, LLC, a healthcare consultant with ambulatory surgery experience in New Jersey and Florida, which is wholly-owned by Henry Bloom.

Beth Israel Ambulatory Care Services Corporation is a not-for-profit and is an affiliate of BIMC. BIMC and its parent support this project, but will not take an active role in the operation of the FASC.

No responses were received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area.

Total project costs are estimated at $7,086,144.

### DOH Recommendation

Contingent approval, with an expiration of the operating certificate five years from the date of its issuance, should the operator not comply with the conditions of approval granted this CON.

### Need Summary

The majority of the cases will be a result of the transfer of excess volume from BIMC. The first year volume of 5,484 procedures is based on the majority of cases that are currently performed at BIMC. The applicant projects a third-year utilization of 5,818 procedures. Performing these cases in the FASC will free up needed space in the hospital's operating room, where inpatient surgical cases have increased by 13.6% from 12,487 in 2008 to 14,189 in 2010.

### Program Summary

Staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary

Total project costs will be met via equity of $708,614 and a bank loan of $6,377,530 (7 yrs. @ 5.25%).

| | | |
|---|---|---|
| Budget: | *Revenues:* | *$ 10,049,135* |
| | *Expenses:* | *6,834,505* |
| | *Gain/(Loss):* | *$ 3,214,630* |

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 with an expiration of the operating certificate five years from the date of its issuance is recommended contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation. These reports shalll include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided; and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing efforts and results. [RNR]
6. Submission of a bank loan commitment that is acceptable to the Department. [BFA]
7. Submission of a photocopy of an executed lease rental agreement that is acceptable to the Department. [BFA, CSL]
8. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
9. Submission of a photocopy of the executed Articles of Organization of Union Square SC, L.L.C., acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Operating Agreement of Union Square SC, L.L.C., acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Articles of Organization of Metro-Bloom LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed Operating Agreement of Metro-Bloom LLC, acceptable to the Department. [CSL]
13. 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 June 30, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

7. The submission of a CON or other licensing extension application required by the Department prior to expiration date of the operating certificate issued pursuant to this CON, seeking extension of the operating certificate of the ambulatory surgery center. [PMU]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Union Square SC, LLC requests approval to establish and construct a single-specialty freestanding ambulatory surgery center (FASC) at 27 West 20th Street, New York, in New York County.

Currently, New York County has 12 FASCs. The types of ambulatory surgery service and number of cases performed at the centers are listed below:

***Existing Ambulatory Surgery Centers: New York County***

| *AS Type* | *Name* | *2010* | *2011* |
|---|---|---|---|
| Gastroenterology | Carnegie Hill Endo, LLC | N/A | N/A |
| Multi Specialty | Center for Specialty Care Inc | 4,679 | 4,757 |
| Gastroenterology | East Side Endoscopy | 6,326 | 9,059 |
| Multi Specialty | Fifth Avenue Surgery Center | 916 | 1,494 |
| Multi Specialty | Gramercy Park Digestive Disease Center | 7,494 | 8,215 |
| Multi Specialty | Gramercy Surgery Center, Inc | 1,868 | 1,876 |
| Endoscopy | Kips Bay Endoscopy Center, LLC | 9,179 | 9,504 |
| Gastroenterology | Manhattan Endoscopy Center, LLC | N/A | 617 |
| Ophthalmology | Mid Manhattan Surgi-Center | 4,011 | 3,661 |
| Multi Specialty | Midtown Surgery Center | N/A | 2,867 |
| Ophthalmology | Retinal Ambulatory Surgery Center of New York Inc | 924 | 1,857 |
| Multi Specialty | SurgiCare of Manhattan, LLC | 1,671 | 3,350 |
| *Total* | | *37,068* | *47,257* |

*Source: SPARCS 2010 – 2011.*

The first-year volume of 5,484 procedures is based on the majority of cases that are currently performed at Beth Israel Medical Center. The applicant projects a third-year utilization of 5,818 procedures. Performing these cases in the ambulatory surgery center will free up needed space in the hospital's operating room, where inpatient surgical cases have increased by 13.6 percent, from 12,487 in 2008 to 14,189 in 2010.

The applicant states that the members of Union Square SC, LLC are committed to serving all persons in need of its specialty care without regard to race, sex, age, religion, creed, sexual orientation, ability to pay, source of payment or other personal characteristics.

## Recommendation

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

# Programmatic Analysis

Establish a diagnostic and treatment center that will also be federally certified as a single-specialty ambulatory surgery center.

| **Proposed Operator** | **Union Square SC, LLC**<br>Upon approval will change name to Union Square Surgery Center, LLC |
|---|---|
| Site Address | 27 West 20th Street, New York |
| Surgical Specialties | Orthopedics |
| Operating Rooms | 4 |
| Hours of Operation | Monday through Friday from 7:00 am to 6:00 pm (Extended as necessary to accommodate patient needs). |
| Staffing (1st Year / 3rd Year) | 24.5 FTEs / 28 FTEs |
| Medical Director(s) | Peter McCann |
| Emergency, In-Patient and Backup Support Services | Beth Israel Medical Center<br>1.1 miles / 5 minutes |
| On-call service | Access to the facility's on-call physician during hours when the facility is closed. |

## Character and Competence

The members of the LLC are:

| | |
|---|---|
| Class A Members | |
| Steven J. Arsht, MD | 1.731% |
| Steven Beldner, MD | 1.731% |
| Catherine A. Compito, MD | 1.731% |
| Jonathan C. Gordon, MD | 1.731% |
| Christopher E. Hubbard, MD | 1.731% |
| Jerry A. Lubliner, MD | 1.731% |
| Peter D. McCann, MD | 1.731% |
| Debra M. Parisi, MD | 1.731% |
| Kevin D. Plancher, MD | 1.731% |
| Daniel B. Polatsch, MD | 1.731% |
| Vladimir B. Shur, MD | 1.731% |
| Max Tyorkin, MD | 1.731% |
| Robert J. Ziets, MD | 1.731% |
| | 1.731% |
| Class B Members | |
| Metro-Bloom, LLC | 10.000% |
| -- Henry Bloom (100%) | |
| Class C Members | |
| Beth Israel Ambulatory Care Services Corp | 67.500% |

The 13 Class A members are all practicing surgeons with admitting privileges to Beth Israel Medical Center. The Class B member is wholly owned by Henry Bloom. Mr. Bloom has extensive experience providing administrative and consulting services to ambulatory surgery centers nationwide. The Class C member, Beth Israel Ambulatory Care Services Corp. (BIACSC), is a not-for-profit corporation which is an affiliate of Beth Israel Medical Center (BIMC) and whose board members are officers of BIMC. BIACSC is the operator and/or member of multiple ambulatory surgery centers in New York State.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's 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.
Dr. Gordon disclosed three pending malpractice cases. Dr. Hubbard disclosed one settled malpractice case. Dr. Ziets disclosed two settled and one pending malpractice cases.

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.

In 2005 Beth Israel Medical Center entered into a Corporate Integrity Agreement related to cost report overpayments. The Agreement remains in effect.

### Integration with Community Resources

The center has committed to serving all persons in need of its specialty care without regard to race, sex, age, religion, creed, sexual orientation, ability to pay, source of payment or other personal characteristics.

The center commits to becoming a network provider in the provider-led health homes designated by the Department for New York County and its surrounding counties and will consider joining any Accountable Care Organization that is formed for providers in New York County. Additionally, the center intends to implement an electronic medical record system that qualifies under the Meaningful Use provisions of the HITECH Act and will consider joining a regional health information organization or qualified health information exchange.

### Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

| | |
|---|---|
| *Premises:* | 12,000 square feet located at 27 West 20th Street, New York, New York |
| *Lessor:* | Dezer Properties, Inc. |
| *Lessee:* | Union Square SC, LLC |
| *Term:* | Fifteen years (15) |
| *Rental:* | $702,000 per annum ($58.50 per sq. ft.) plus a 3% increase compounded annually. |
| *Provisions:* | The lessee shall be responsible for utilities. |

The applicant has submitted an affidavit indicating that the lease agreement will be an arm's length lease arrangement. The applicant has submitted three real estate letters attesting to the reasonableness of the per square foot rental.

## Development Services Agreement

The applicant has submitted an executed development services agreement which they will enter before they open the facility, which is summarized below:

| | |
|---|---|
| *Date:* | February 28, 2012 |
| *Facility:* | Union Square SC, LLC |
| *Contractor:* | Metro Bloom, LLC |
| *Term:* | Metro Bloom, LLC shall begin providing Development Services on the commencement date and shall continue providing such Development Services until the Center perform its first surgical procedure at the Center. |
| *Services Provided:* | During the term, Metro Bloom, LLC shall be responsible for a 3 phase Development Process. The Contractor will provide the following services: Assist the company with respect to the development and review of pro forma statements of operations and strategic planning; assist the company with site location in order to determine the best location of the Center; assist the Company with respect to the Company's efforts to obtain financing for the Center; interview and advise the Company with respect to the selection of an architect; shall schedule and attend regular meetings with the architect, the Company and a steering group of physicians; review the architect's drawings and specifications as they are being prepared; assist in the preparation of a budget for the Center; indentify and arrange for the purchase of any and all instrumentation and equipment required for the Center; shall monitor and review all changes to the Center or the Budget with the Company and the architect and assist in negotiating said changes; shall recommend for purchase or lease by the Company, any and all furniture, fixtures, equipment and supplies as may be required in order to operate the Center; shall recommend for approval and hire by the Company and all staff as shall be required in connection with the development of the Center; shall assist and recommend the selection and implementation of the Company's computer system and Metro will assist in the preparation of financial projections for the Company, which shall include revenue forecasts based on current reimbursement methodologies and staffing and supply expense estimates. |
| *Compensation:* | In consideration of the Development Services to be performed by Metro, the Company shall compensate Metro for three phases of services, for maximum aggregate payments of one hundred fifty thousand dollars ($150,000). |

## Administrative Services Agreement

The applicant has submitted an executed administrative services agreement, which is summarized below:

| | |
|---|---|
| *Facility:* | Union Square Surgery Center |
| *Contractor:* | Metro Bloom, LLC |
| *Term:* | Three years and the agreement shall be extended for an additional two years. |
| *Compensation:* | The administrative services fee will be $96,000 annually for the term of the agreement. |
| *Services Provided:* | The Consultant shall provide the following services: Responsible for consulting with the Client relative to the Client's furniture, fixtures and equipment; work closely with Administrator to arrange for appropriate maintenance of equipment; subject to the Client's approval, the Contractor shall recruit a full time on-site administrator; shall recruit and recommend for hire by Client and all clerical and professional personnel that will be required in order to operate the Center; assist the Client to establish unified office policies and procedures, which such policies and procedures shall be approved by the Client; work with the |

accountants to develop and establish bookkeeping and accounting protocols; consultant shall maintain, monitor and reconcile all bank accounts; assist the Client to establish and monitor Quality Assurance/Utilization Review programs for the Client; negotiate contracts with various hospitals, insurance companies and managed care companies; perform a quarterly on-site review of the Client to assist Client in meeting regulatory and accreditation standards and shall establish and operational budget on an annual basis subject to the review and approval of the Board.

The Consultant will not have the following responsibilities:

- authority to hire or fire the administrator or other key management employees;
- maintenance and control of the books and records;
- authority over the disposition of assets and the incurring of liabilities on behalf of the facility, and
- the adoption and enforcement of policies regarding to the operation of the facility.

## Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at $7,086,144, itemized below:

| | |
|---|---|
| Renovation and Demolition | $3,392,376 |
| Design Contingency | 339,237 |
| Construction Contingency | 339,237 |
| Architect/Engineering Fees | 332,800 |
| Construction Manager Fees | 40,000 |
| Other Fees (Consultant) | 369,000 |
| Moveable Equipment | 1,771,000 |
| Telecommunications | 182,000 |
| Financing Costs | 127,551 |
| Interim Interest Expense | 152,193 |
| CON Fee | 2,000 |
| Additional Processing Fee | 38,750 |
| Total Project Cost | $7,086,144 |

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

The applicant's financing plan appears as follows:

| | |
|---|---|
| Equity | $ 708,614 |
| Bank Loan (5.25% interest rate for a seven year term) | $6,377,530 |

## Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues | $9,472,274 | $10,049,135 |
| Expenses: | | |
| Operating | $4,750,474 | $ 5,214,291 |
| Capital | 1,661,307 | 1,620,214 |

| | | |
|---|---|---|
| Total Expenses | $6,411,781 | $ 6,834,505 |
| Net Income | $3,060,493 | $ 3,214,630 |
| Utilization: (Procedures) | 5,484 | 5,818 |
| Cost Per Procedure | $1,169.18 | $1,174.72 |

Utilization by payor source during the first and third years is shown below:

| | Years One and Three |
|---|---|
| Medicaid Fee-for-Service | 0.87% |
| Medicaid Managed Care | 11.03% |
| Medicare Fee-for-Service | 10.01% |
| Commercial Fee-for-Service | 38.36% |
| Commercial Managed Care | 34.71% |
| Charity Care | 5.02% |

Utilization projections are based on the experience of the participating surgeons and their estimate of the number of cases they would bring to the Center. Expense assumptions are based on the experience of the participating physicians, as well as the projections and experience of other freestanding ambulatory surgery centers in New York State.

## Capability and Feasibility

The applicant will finance $6,377,530 at an interest rate of 5.25% for a seven year term; the applicant has provided a letter of interest. The remainder, $708,614, will be provided as equity from the proposed members' personal resources and via Beth Israel Ambulatory Care Services Corporation's operations.

Working capital requirement is estimated at $1,139,084, which is equivalent to two months of third year expenses. The applicant will finance $569,542 at an interest rate of 4.50% for a term of five years. The remainder, $569,542, will be provided from the proposed members' personal resources and via Beth Israel Ambulatory Care Services Corporation's operations. Presented as BFA Attachment A and B are the personal net worth statements for the proposed members of Union Square SC, LLC, and the 2010 and 2011 certified financial statements of Beth Israel Ambulatory Care Services Corporation, which indicates the availability of sufficient funds for the equity contribution. Presented as BFA Attachment C, is the pro-forma balance sheet of Union Square SC, LLC as of the first day of operation, which indicates a positive net asset position of $1,278,156 as of the first day of operation.

The submitted budget indicates a projected net income of $3,060,493 and $3,214,630 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery services.

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

## Recommendation

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

# Attachments

| | |
|---|---|
| BFA Attachment A | Personal Net Worth Statement |
| BFA Attachment B | 2010 and 2011 certified financial statements of Beth Israel Ambulatory Care Services Corporation |
| BFA Attachment C | Pro-forma Balance Sheet |
| BHFP Attachment | Map |

# Supplemental Information

## Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** NYU Langone Medical Center
550 First Avenue Avenue
New York, New York 10016

No response.

**Facility:** Hospital for Joint Diseases
301 East 17th Street
New York, New York 10003

No response.

**Facility:** Bellevue Hospital Center
First Avenue at 27th Street
New York, New York 10016

No response.

## Supplemental Information from Applicant

- Need and Sources of Cases

The utilization projected for the proposed ASC is base on the current caseload of the 13 member physicians who have committed to perform cases at the facility. The majority of the cases (98%) at the proposed ASC are currently being performed at Beth Israel Medical Center's (BIMC) Philips Ambulatory Care Center, with the remaining procedures performed in the physicians' private offices or other freestanding (non-hospital based) ambulatory surgery centers.

The proposed application has been developed with the cooperation and support of BIMC. The applicant also cites the continuous growth of ambulatory surgery in New York County, and in New York State, as a source of cases and further expects that the higher quality of surgery in ASCs will cause patients and insurers to prefer the services of an ASC, as opposed to an office-based practice.

- Staff Recruitment and Retnetion

The applicant states that initial recruitment will be of selected staff currently employed by the member physicians in their private practices, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

- Office-Based Cases

As noted previously, the majority of the projected cases (98%) are currently being performed at BIMC's Philips Ambulatory Care Center, which is related to the Beth Israel Ambulatory Care Services Corporation, one of the owners of the proposed ASC, with the remaining cases coming from the physicians' private offices or other non-hospital based ASCs. The applicant states that none of the projected procedures will migrate to the proposed ASC from any hospital or other ASC.

OHSM Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty freestanding ambulatory surgery center specializing in orthopedic procedures, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY/APPLICANT: |
|---|---|
| 121403 B | Union Square SC, LLC |

APPROVAL CONTINGENT UPON:

**Approval with an expiration of the operating certificate five years from the date of its issuance is recommended contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation. These reports shalll include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided; and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel, and it is concluded that proceeding with the proposal is acceptable. [RNR]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing efforts and results. [RNR]
6. Submission of a bank loan commitment that is acceptable to the Department. [BFA]
7. Submission of a photocopy of an executed lease rental agreement that is acceptable to the Department. [BFA, CSL]
8. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
9. Submission of a photocopy of the executed Articles of Organization of Union Square SC, L.L.C., acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Operating Agreement of Union Square SC, L.L.C., acceptable to the Department. [CSL]

11. Submission of a photocopy of the executed Articles of Organization of Metro-Bloom LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of the executed Operating Agreement of Metro-Bloom LLC, acceptable to the Department. [CSL]
13. 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 June 30, 2015. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
7. The submission of a CON or other licensing extension application required by the Department prior to expiration date of the operating certificate issued pursuant to this CON, seeking extension of the operating certificate of the ambulatory surgery center. [PMU]

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 # 121354-E
## Hillside Polymedic Diagnostic and Treatment Center, Inc.

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

***Program:*** **Diagnostic and Treatment Center**
***Submitted:*** **April 27, 2012**

## Executive Summary

### Description
Hillside Polymedic Diagnostic and Treatment Center, Inc. (Hillside Polymedic), a proprietary corporation, requests permanent life approval to operate an Article 28 diagnostic and treatment center (D&TC) providing primary care and specialty services at 187-30 Hillside Avenue, Jamaica. Under CON #052016-B, Hillside Polymedic was approved by the Public Health Council in November 2005 for a limited life of five years. The sole shareholder of Hillside Polymedic is Bridget Chime.

### DOH Recommendation
Approval.

### Need Summary
Hillside Polymedic Diagnostic and Treatment Center, Inc. (Hillside Polymedic) served 3,127 patients in 2011, for a total of 13,333 visits since becoming operational in 2007. Nearly 71% of the visits accounted for primary care services, including: internal medicine (26.9%), obstetrics and gynecology (16.9%), pediatrics (15.8%), and family medicine (11.0%). The remaining 29% of the visits were podiatry (12.9%), dental (4.9%), and other (12.1%).

It is projected that visits will increase from 13,133 to 17,333 in the first year of permanent life operation and 19,533 by year 3.

### 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: | Revenues: | $ 1,988,412 |
| | Expenses: | 1,852,887 |
| | Gain/(Loss): | $ 135,525 |

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.**

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Hillside Polymedic Diagnostic and Treatment Center, Inc. (Hillside Polymedic), located at 187-30 Hillside Avenue, Jamaica, 11432 in Queens County, seeks permanent life. Hillside was previously approved for a 5-year limited life through CON #052016-B. The applicant has met the following contingency on CON #052016-B:

*Submission of an agreement with an outside independent entity, satisfactory to the Department, to provide annual reports to the department beginning in the second year of operation).*

## Analysis

The service area includes ten zip codes in Queens County as follows:

11432, 11423, 11412, 11434, 11433, 11429, 11427, 11428, 11413, and 11435.

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.

The PQIs for zip code 11432, the location of Hillside, are significantly poor compared with those of the State (Source: NYSDOH). The rates for the ten service area zip codes are also unfavorable for most of the PQI conditions.

| *PQIs: # of admissions per* | | *Ten Service Area* | |
|---|---|---|---|
| *100,000 adult population* | *Zip Code 11432* | *Zip Codes* | *NYS* |
| All PQIs | 2,130 | 2,014 | 1,563 |
| All Acute | 646 | 520 | 526 |
| All Circulatory | 662 | 697 | 456 |
| All Diabetes | 398 | 406 | 224 |
| All Respiratory | 421 | 391 | 357 |

The number of projected visits is as follows:

| | |
|---|---|
| Current Year | 13,133 |
| First Year | 17,333 |
| Third Year | 19,533 |

These projections are based on moderate growth and the addition of the provider staff. Based on the NYSDOH data, the population of Queens County is expected to grow 9.5 percent from 2010-2020. The elderly population (65 years and over) will grow approximately 27 percent.

## Conclusion

According to the annual reports compiled by the outside independent entity engaged to review the facility's services and operations Hillside Polymedic has provided primary care and related services to residents of their service area under the terms of the limited life approval put into effect on April 27, 2007.

## Recommendation

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

# Programmatic Analysis

## Program Proposal

Seek Permanent Life approval for a diagnostic and treatment center which has been operating for five years. There will be no changes to the facility's services as a result of this project.

## Character and Competence

The sole member of the LLC is Bridget Chime.

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.

## Recommendation

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

# Financial Analysis

## Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site, which is summarized below:

| | |
|---|---|
| *Premises:* | 8,466 square feet located at 187-30 Hillside Avenue, Jamaica, New York |
| *Lessor:* | Chudi Chime |
| *Lessee:* | Hillside Polymedic Diagnostic and Treatment Center |
| *Term:* | 10 years |
| *Rental:* | $240,000 annually ($28.35 per sq. ft.) |
| *Provisions:* | The lessee shall be responsible for maintenance, insurance and utilities. |

## Operating Budget

The applicant has submitted operating budgets for the current year (2010) and years one and three in 2012 dollars, summarized below:

| | Current Year | Year One | Year Three |
|---|---|---|---|
| Revenues | $1,207,433 | $1,761,862 | $1,988,412 |
| Total Operating Expenses | 1,475,359 | 1,663,358 | 1,852,887 |
| Net Income | $(267,926) | $98,504 | $135,525 |
| Utilization: (visits) | 11,007 | 17,333 | 19,533 |
| Cost Per Visit | $134.03 | $95.96 | $94.85 |

Utilization by payor source for the current year and year's one and three is as follows:

| | Current year (2010) | Year One | Year Three |
|---|---|---|---|
| Medicaid Fee-for-Service | 5.90% | 9.53% | 9.53% |
| Medicaid Managed Care | 41.52% | 42.22% | 42.22% |
| Medicare Fee-for-Service | 2.71% | 3.17% | 3.17% |
| Medicare Managed Care | .28% | 3.17% | 3.17% |
| Commercial Fee-for-Service | 6.49% | 5.62% | 5.59% |
| Commercial Managed Care | 30.88% | 31.28% | 31.28% |
| Private Pay | 12.22% | 5.01% | 5.04% |

Below, as a comparison, is the projected year one and year three utilization by payor source from the original limited life application CON #052016-B.

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | 15% | 15% |
| Medicaid Managed Care | 20% | 20% |
| Medicare | 5% | 5% |
| Commercial Fee-for-Service | 8% | 8% |
| Commercial Managed Care | 47% | 47% |
| Self Pay | 5% | 5% |

Expense and utilization assumptions are based on the historical experience of Hillside Polymedic Diagnostic and Treatment Center.

## Capability and Feasibility

There are no project costs associated with this application.

Working capital requirement is estimated at $308,815, which is equivalent to two months of incremental third year expenses. The sole shareholder will provide equity to meet the working capital requirement. Presented as BFA Attachment A is the net worth statement of the sole shareholder, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of $98,504 and $135,525 during the first and third years after the permanent life. Revenues are based on current reimbursement rates. The improvement in operations from historical to projected is the result of an increase in visits. The increase in visits is the result of provider staff now stabilized, and plans are in place to increase the number of physicians FTE's (from 4.2 currently to 5.0 in year 3) and to add a full time nurse practitioner immediately. The facility anticipates that all provider staff will be able to operate more efficiently as a result of these changes.

Presented as BFA Attachment B are the 2010 and 2011 compiled financial statements of Hillside Polymedic Diagnostic and Treatment Center. As shown on Attachment B, the facility had an average negative working capital position and an average negative net asset position. Also, the facility incurred an average net loss of $251,682 from 2010 through 2011. The applicant has indicated that the reason for the losses are as follows: much lower patient volume than anticipated, medical staff provider turnover, more rapid movement to Medicaid Managed Care, high fixed costs for space that can accommodate more patient activity than exists, and insufficient payment rates from Medicaid Managed Care plans (much lower than fee for service). The applicant is adding ambulatory surgery, family planning, nutrition, psychological services and medical social services to improve operations. The turnover in medical staff has subsided and is currently stable, which will help maintain and expand the existing patient base and ease the administrative resources required to enroll providers with managed care plans. Also, the lease for space has been renegotiated, which reduces operating expenses by $120,000 annually. Patient visit volume has also been steadily increasing over the past few years.

Presented as BFA Attachment C are the April 30, 2012 internal financial statements of Hillside Polymedic Diagnostic and Treatment Center. As shown on Attachment C, the facility had a negative working capital position and a negative net asset position. Also, the facility achieved a net income of $30,347 through April 30, 2012.

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

Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Personal Net Worth Statement |
| BFA Attachment B | 2010 and 2011 compiled financial statements of Hillside Polymedic Diagnostic and Treatment Center |
| BFA Attachment C | April 30, 2012 internal financial statements of Hillside Polymedic Diagnostic and Treatment 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 11th day of October, 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 certify indefinite life to operate an Article 28 diagnostic and treatment center providing primary care and specialty services at 187-30 Hillside Avenue, Jamaica, 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: |
|---|---|
| 121354 E | Hillside Polymedic Diagnostic and Treatment Center |

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

# Public Health and Health Planning Council

## Project # 121355-E

## A Merryland Operating, LLC d/b/a Mermaid Health Center

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

***Program:*** **Diagnostic and Treatment Center**
***Submitted:*** **April 27, 2012**

## Executive Summary

### Description

A Merryland Operating, LLC d/b/a Mermaid Health Center requests approval to be established as the new operator of Mermaid Health Center, an existing, proprietary diagnostic and treatment center (D&TC) located at 1704-1706 Mermaid Avenue, Brooklyn, via asset purchase agreement with the current operator – Mermaid Management, Inc. Ownership of the operation before and after the requested change is as follows:

| *Current* | *Interest* |
|---|---|
| Mermaid Management, Inc. | |
| MEMBERS: | |
| -- Armen Gambarian | 45.5% |
| -- Arkady Starovoyt | 45.5% |
| -- Maria Starovoyt | 9.0% |
| *Proposed* | *Interest* |
| A Merryland Operating, LLC | |
| MEMBER: | |
| -- Lidiya Leshchinsky | 100% |

Upon approval the center will continue to provide nutritional services, optometry, pediatrics, podiatry, primary medical care, physical therapy and well child care.

### DOH Recommendation

Contingent approval.

### Need Summary

There will be no change in services as a result of this transaction. It is projected that there will be 6,850 visits in year one and 11,600 in year 3.

### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary

Total asset purchase price of $100,000 will be met with a $ 90,000 personal loan at an interest rate of 3% for five years and $10,000 of member's equity.

| | | |
|---|---|---|
| Budget: | *Revenues:* | *$ 1,123,832* |
| | *Expenses:* | *1,029,592* |
| | *Gain/(Loss):* | *$ 94,240* |

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 statement from the applicant, acceptable to the Department of Health, documenting commitment to serve patients regardless of their ability to pay or the source of payment and the amount of charity care. [RNR]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of an executed Lease Agreement of A Merryland Operating, LLC, acceptable to the Department. [BFA, CSL]
4. The completion of Schedules 1A and 3B, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Articles of Organization of A Merryland Operating, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Operating Agreement of A Merryland Operating, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Amendment or Certificate of Dissolution of Mermaid Management, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Discontinuance of an Assumed Name of Mermaid Management, Inc., acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]

## Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

Mermaid Health Center, Inc. (Mermaid) seeks approval for an Asset Purchase Agreement with A Maryland Operating, LLC to acquire the operating interests of Mermaid.

## Analysis

The primary service area of Mermaid is located in zip codes 11224, 11223, 11229, and 11235.

The number of projected visits is as follows:

| | |
|---|---|
| Current Year: | 3,036 |
| First Year: | 6,850 |
| Third Year: | 11,600 |

Mermaid Health Center provides the following services:

| | | | |
|---|---|---|---|
| Nutritional O/P | Optometry O/P | Pediatric O/P | Podiatry O/P |
| Primary Medical Care O/P | Physical Therapy O/P | Well Child care O/P | |

Lutheran Medical Center will provide backup and transfer services for Mermaid. Lutheran is located six (6) miles from Mermaid, with travel time of approximately 15 minutes.

## Conclusion

Mermaid Health Center is an existing D&TC that provides comprehensive primary care services to the community. The proposed change of ownership will preserve this resource for the community.

## Recommendation

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

# Programmatic Analysis

## Program Proposal

Establish a new operator of an existing diagnostic and treatment center.

| **Proposed Operator** | **A Merryland Operating, LLC** |
|---|---|
| Doing Business As | Mermaid Health Center |
| Site Address | |
| Services | Nutrition Optometry<br>Pediatrics Physical Therapy<br>Podiatry Well Child<br>Primary Care |
| Staffing (1st Year / 3rd Year) | 10.3 FTEs / 10.7 FTEs |
| Medical Director(s) | Asha Mittal |
| Emergency, In-Patient and Backup Support Services Agreement and Distance | Lutheran Medical Center<br>6 miles, 15 minutes travel time |

### Character and Competence

The sole member of the LLC is Lidiya Leshchinsky. Ms. Leshchinsky is the owner operator of Anfex, Inc., a durable medical equipment supplier. She has also been employed by Mermaid Health Center as the CEO since February 15, 2012.

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, contingent approval is recommended.**

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

| | |
|---|---|
| *Date:* | February 10, 2012 |
| *Seller:* | Mermaid Management, Inc., d/b/a Mermaid Health Center |
| *Buyer:* | A Merryland Operating, LLC |
| *Assets Transferred:* | All seller's right, title and interest in equipment, furniture, furnishings and supplies; seller's good will and business; copies of client lists and patient files; rights to provider agreements and supplier/vendor agreements; all tangible assets owned by Seller and principally used in the business of Clinic; leases of personal property; contract and contract rights; Seller's cash, cash equivalents, security or performance deposits and notes receivable; all accounts receivable for services rendered from and including the effective date; any trade names used by seller; any claims, refunds, rights, actions and litigation by Seller, and the proceeds thereof. |
| *Excluded Assets:* | The clinic's financial records, canceled checks and bank statements; the clinic's books and records, tax records and tax returns, accounting records and general ledger or other books of account; insurance policies and prepaid premiums, and |

| | |
|---|---|
| | other prepaid expenses and seller's federal tax identification number. |
| *Assumed Liabilities:* | Buyer shall assume all liabilities and obligations of the clinic based upon operation of the clinic arising on or after the effective date. |
| *Purchase Price:* | $100,000 |
| *Payment:* | Paid in full at the closing. |

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law, with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liabilities and responsibilities.

## Lease Assignment Agreement

The applicant has submitted a proposed lease assignment agreement, the terms of which are summarized below:

| | |
|---|---|
| *Date:* | January 22, 2010 |
| *Landlord:* | 1709 Surf Avenue Associates, LLC |
| *Assignor:* | Mermaid Management, Inc. |
| *Assignee:* | A Merryland Operating, LLC |
| *Premises:* | Approximately 4,000 sq. ft. on the ground floor of the building located at 1704-1706 Mermaid Avenue, Brooklyn |
| *Rental* | $84,000 per year, increasing 5% yearly |
| *Term:* | 5 year term with the option to renew for an additional five years. |
| *Provisions:* | The Assignee shall be responsible for taxes, utilities, insurance and maintenance. |

The applicant has indicated that the lease will be an arm's length agreement, and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness.

## Operating Budget

The applicant has submitted an operating budget, in 2012 dollars, for the first year subsequent to the change in operator, summarized below:

| | Year One |
|---|---|
| Revenues: | $1,123,832 |
| Expenses: | |
| Operating | $836,108 |
| Capital | 193,484 |
| Total Expenses: | $1,029,592 |
| | |
| Net Income: | $94,240 |
| | |
| Utilization(visits) | 10,341 |
| Cost per visit | $99.56 |

Utilization by payor source for the first year is as follows:

| | Year One |
|---|---|
| Commercial | 0.6% |
| Medicare Fee-for-Service | 16.0% |
| Medicare Managed Care | 0.4% |
| Medicaid Fee-for-Service | 18.0% |
| Medicaid Managed Care | 61.0% |
| Private Pay | 2.0% |
| Charity Care | 2.0% |

Expenses and utilization are based on the historical experience of Mermaid Health Center.

### Capability and Feasibility

The purchase price of $100,000 will be provided by $10,000 member's equity and a $90,000 personal loan from Yury Leshchinsky, husband of applicant, at an interest rate of 3% for five years, for which a commitment letter has been provided and DOH staff has confirmed sufficient funds available. Presented as BFA Attachment A is the net worth statement of the proposed member showing sufficient funds.

Working capital contributions are estimated at $171,599, based on two months of first year expenses, and will be provided by member's equity. Presented as BFA Attachment B, is the pro-forma balance sheet of A Merryland Operating, LLC as of the first day of operation, which indicates positive member's equity position of $150,000.

The submitted budget indicates a net income of $94,240 for the first year subsequent to change in ownership. Revenue is based on Mermaid Health Center's experience in the operation of its diagnostic and treatment center and on current reimbursement rates. The budget appears reasonable.

Presented as BFA Attachment C, a financial summary of Mermaid Operating Co., LLC, indicates that the facility experienced negative working capital and member's equity for 2009 and 2010 and generated a net income of $52,312 in 2009 and experienced a net loss of $211,447 in 2010. The applicant has stated the reason for the losses is from the loss of its medical director, who was responsible for generating a substantial portion of the center's business, discontinuance of some of the services that were provided, and difficulty in enrolling physicians into the appropriate health plans. To improve operations, the applicant has already hired a new medical director and plans to improve community outreach and marketing efforts, restore discontinued services and add additional services in the future.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in financially feasible manner, and approval is recommended.

### Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Personal Net Worth Statement |
| BFA Attachment B | Pro-forma Balance Sheet |
| BFA Attachment C | Financial Summary, Mermaid Operating Co., LLC. |

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October, 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 A Merryland Operating, LLC d/b/a Mermaid Health Center as the new operator of Mermaid Health Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY/APPLICANT: |
|---|---|
| 121355 E | A Merryland Operating, LLC d/b/a Mermaid Health Center |

APPROVAL CONTINGENT UPON:

1. Submission of a statement from the applicant, acceptable to the Department of Health, documenting commitment to serve patients regardless of their ability to pay or the source of payment and the amount of charity care. [RNR]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of an executed Lease Agreement of A Merryland Operating, LLC, acceptable to the Department. [BFA, CSL]
4. The completion of Schedules 1A and 3B, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Articles of Organization of A Merryland Operating, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Operating Agreement of A Merryland Operating, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed Certificate of Amendment or Certificate of Dissolution of Mermaid Management, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Certificate of Discontinuance of an Assumed Name of Mermaid Management, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

# Public Health and Health Planning Council

## Project # 122001-E
## Beacon Christian Community Health Center

***County:*** **Richmond (Staten Island)**
***Purpose:*** **Establishment**

***Program:*** **Diagnostic and Treatment Center**
***Submitted:*** **July 2, 2012**

## Executive Summary

### Description
Beacon Christian Community Health Center, Inc. (BCCHC), an existing not-for-profit Article 28 diagnostic and treatment center (D&TC) and Federally Qualified Health Center (FQHC) located at 2079 Forest Avenue, Staten Island, requests permanent life approval. BCCHC received Public Health Council approval for five-year limited life on November 19, 2004, via CON #041107-B, and began operations on August 11, 2006.

### DOH Recommendation
Approval.

### Need Summary
After beginning operations in August 2006, BCCHC was unable to meet the projected number of 9,100 visits in the first year of operation when there were 3,250 actual visits. However, it surpassed the projected number of 12,829 visits in the third year with 14,246 actual visits.

The number of proposed visits is as follows:

| | |
|---|---|
| Current Year: | 13,272 |
| First Year: | 14,000 |
| Third Year: | 18,000 |

Beacon Christian Community Health Center has met all terms of the limited life that it was granted in August 2006 and has become a Federally Qualified Health Center.

### Program Summary
Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary
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.**

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Beacon Christian Community Health Center (BCCHC), an existing Article 28 Diagnostic and Treatment Center (D & TC) and Federally Qualified Health Center (FQHC), requests approval for permanent life. BCCHC was granted a five-year limited life through CON 041107. BCCHC is located at 2079 Forest Avenue, Staten Island, 10303, in Richmond County.

Beacon Christian Community Health Center's service area includes zip codes 10302 and 10314.

During the limited life of five years, BCCHC met the following five conditions set forth in the approval:

- Submitted all required annual reports beginning in the 2nd year of the operation.
- From 2008 to 2011, 75 percent of the visits at BCCHC were from patients in its service area, zip codes 10302, 10303, and 10314 during each year from 2008 to 2011.
- By Year 3 of the operation, Medicaid represented 58.4 percent of 8,321 patient visits, and private pay patients who paid according to a sliding fee scale represented 16 percent of 2,284 patient visits. These third year Medicaid visits and private pay visits exceeded the projections at 39.1 percent for Medicaid and 10 percent for private pay.
- BCCHC instituted programs to diagnose, screen, and treat its patients for asthma, diabetes, lead poisoning, and breast, cervical and colorectal cancer.
- BCCHC developed a strong working relationship with Staten Island University Hospital, which routinely refers its discharged Emergency Department patients who do not have a regular primary care provider for follow-up treatment.
- BCCHC promoted continuity of care by decreasing unnecessary visits, increasing available procedures, providing better coordination of referrals to specialists, trying to involve patients in their ongoing health care management, and more.

BCCHC is located in a health professional shortage area (HPSA) for primary care services and is also located in a medically underserved area/population (MUA/P).

The prevention quality indicators (PQIs) for zip code 10303 where BCCHC is located are significantly poor compared with those of the State.

***PQIs: # of admissions per 100,000 adult population***

| | *Zip Code 10303* | *NYS* |
|---|---|---|
| All PQIs | 2,377 | 1,563 |
| All Acute | 602 | 526 |
| All Circulatory | 636 | 456 |
| All Diabetes | 401 | 224 |
| All Respiratory | 702 | 357 |
| Asthma | 401 | 176 |

*Source: NYSDOH*

Beacon Christian Community Health Center has met all terms of the limited life that it was granted in August 2006 and has become a Federally Qualified Health Center.

## Recommendation

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

# Programmatic Analysis

## Background

Grant permanent life for Beacon Christian Community Health Center, a diagnostic and treatment center operating at 2079 Forest Avenue, Staten Island.

## Character and Competence

The board of directors include:

| Name |
|---|
| Victor Anjorin |
| Sushila Balakrishnan |
| Ledia Kaci |
| Debra McCaw |
| Margaret Rozalski |
| Marco Silva |

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 and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

## Recommendation

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

# Financial Analysis

## Operating Budget

The applicant has submitted actual financial operating results for 2011 and a projected operating budget, in 2012 dollars, for the first and third years of operations. The budget is summarized below:

| | Current Year 2011 | Year One (2013) | Year Three (2015) |
|---|---|---|---|
| Revenue: | $2,853,312 | $3,005,737 | $3,620,677 |
| Expenses: | | | |
| Operating | 2,226,717 | 2,603,536 | 3,222,506 |
| Capital | 293,312 | 307,751 | 323,138 |
| Total Expenses | $2,520,029 | $2,911,287 | $3,545,644 |
| Net Income | $333,283 | $ 94,450 | $ 75,033 |
| Utilization (visits) | 13,272 | 14,000 | 18,000 |
| Cost per visit | $189.87 | $207.94 | $196.98 |

Cost per visit increases by $18 in year one, and moderates somewhat in year three due to the following: The applicant indicates that they have held to minimal staffing levels since commencing operations in order to maintain financial

feasibility. The increasing demand for additional services (visits) requires that the applicant increase staffing, to a more preferable level in order to meet both clinical and business operational needs.

Below, are the projected year one and three utilizations from the original limited life application # 041107, along with actual results.

| Utilization (visits) | Year One (2007) | Year Three (2009) |
|---|---|---|
| Projected | 9,100 | 12,829 |
| Actual | 3,250 | 14,246 |

** The actual budgeted number of visits for this primary care practice was initially 9,100 and 12,829 visits year one and three, respectively, when the limited life was originally approved. The applicant did not meet year one projections; however it exceeded the number of projected visits for year three by 1,417.*

Utilization by payor source during the first and third years is itemized as follows:

| | *Current Year* | *Years One and Three* |
|---|---|---|
| Medicaid Fee-for-Service | 10% | 10% |
| Medicaid Managed Care | 54% | 54% |
| Medicare | 5% | 5% |
| Commercial | 15% | 15% |
| Private Pay | 16% | 16% |

Expense and utilization assumptions are based on the experience of the Center, the geographic area, and the impact of Medicaid Managed Care.

Below, as a comparison is the projected year one and three utilization by payor source from the original limited life application # 041107.

| | Year One (2007) | Year Three (2009) |
|---|---|---|
| Medicaid FFS | 13.15% | 7.33% |
| Medicaid M C | 27.18% | 31.80% |
| Medicare FFS | 17.23% | 15.64% |
| Medicare M C | 1.72% | 3.47% |
| Commercial FFS | 11.00% | 6.00% |
| Commercial M C | 22.72% | 25.73% |
| Other | 7.00% | 10.03% |

## Capability and Feasibility

There is no project cost associated with this application.

The issue of feasibility is centered on the applicant's ability to offset ongoing expenses with revenues and maintain a viable operating entity. The submitted budget of the operator indicates a breakeven budget for year one and three. The budget appears reasonable.

Presented as BFA Attachment A is the financial summary of Beacon Christian Community Health Center, Inc. 2010 and 2011 certified financial statements. The Center had an average positive working capital position of $949,911 and an average positive net asset position of $2,132,343 during the period shown.
The surgery center achieved and an operating excess of revenues over expenses of $1,075,859 during 2010 and $316,027 during 2011, respectively.

Presented as BFA Attachment B are January 1 through April 30, 2012 un-audited income statement, which indicate an excess of revenues over expense of $103,939 for the period shown.

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

Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Financial Summary (Certified) – Beacon Christian Community Health Center, Inc. 2010 and 2011 |
| BFA Attachment B | Financial Summary (un-audited) – Beacon Christian Community Health Center, Inc. January 1 through April 30, 2012. |

# 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 11th day of October, 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 certify indefinite life for an Article 28 diagnostic and treatment center and federally qualified health center located at 2079 Forest Avenue, Staten Island, 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: |
|---|---|
| 122001 E | Beacon Christian Community Health Center |

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

# Public Health and Health Planning Council

## Project # 121481-E

## Haym Solomon Home for the Aged

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

***Program:*** **Residential Health Care Facility**
***Submitted:*** **June 29, 2012**

## Executive Summary

### Description

Haym Solomon Home for the Aged, LLC, an existing 20-bed residential health care facility (RHCF) located at 2340 Cropsey Avenue, Brooklyn, requests approval for a change in the facility's membership and ownership. The total aggregate percentage interests that will be transferred if this application is approved are 54% of the LLC's percentage interests

This application proposes the addition of two (2) new members to the LLC who will own a total of 27% of the LLC's percentage interests. Additionally, four existing members are increasing their percentage interest by 4% each. Two members who own a total of 54% of the percentage interests of the LLC, have decided to reduce their membership interest to a combined 27% of the LLC. The current and the proposed ownership of Haym Solomon Home for the Aged, LLC is as follows:

| | *Current* | *Proposed* | *Status* |
|---|---|---|---|
| Olga Lipschitz | 21% | 5% | Decreasing |
| Estate if Adolf Wieder | 10% | 10% | No Change |
| Tzipporah Paneth | 12% | 12% | No Change |
| Pearl Kahan | 6% | 10% | Increasing |
| Samuel Lipschitz | 6% | 10% | Increasing |
| Howard Liptschitz | 6% | 10% | Increasing |
| Elliot Lipschitz | 6% | 10% | Increasing |
| Anna Paneth | 33% | 22% | Decreasing |
| Leah Werner | 0% | 10% | New Member |
| Morton Paneth | 0% | 1% | New Member |

The two new proposed members also have ownership interests in Sheepshead Nursing and Rehabilitation Center, LLC.

### DOH Recommendation

Contingent approval.

### Need Summary

As this project involves only a change in the ownership interests, no Need recommendation is required.

### Program Summary

No negative information has been received concerning the character and competence of the above applicants identified as new members.

No changes in the program or physical environment are proposed in this application.

### Financial Summary

There is no monetary consideration for this application. Also, there are no project costs associated with this application. The change in membership will have no impact on the day-to-day business. 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 transfer agreement that is acceptable to the Department of Health. [BFA]

## Council Action Date

**October 11, 2012.**

# Programmatic Analysis

## Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | Haym Solomon Home for the Aged | Same |
| *Address* | 2340 Cropsey Avenue<br>Brooklyn, NY. 11214 | Same |
| *RHCF Capacity* | 240 | Same |
| *ADHC Program Capacity* | N/A | N/A |
| *Type of Operator* | LLC | LLC |
| *Class of Operator* | Proprietary | Proprietary |
| *Operator* | Haym Solomon Home for the Aged, LLC<br><br>Members:<br>Anna Paneth ……33%<br>Olga Lipschitz……...21%<br>Estate of Adolf Wieder…...…10%<br>Tzipporah Paneth.……..…12%<br>Pearl Kahan..……..…..…6%<br>Samuel Lipschitz..…….... 6%<br>Howard Lipschitz……..…6%<br>Elliot Lipschitz……..…6% | Same<br><br>Members:<br>Anna Paneth ……..…..22%<br>Tzipporah Paneth.……..…..12%<br>Estate of Adolf Wieder….....10%<br>Pearl Kahan..……..……...10%<br>Samuel Lipschitz..…….....10%<br>Howard Lipschitz…….. 10%<br>Elliot Lipschitz……....10%<br>Olga Lipschitz……..……..…5%<br><br>New Members<br>Leah Werner……..……10%<br>Morton Paneth……..…..1% |

## Character and Competence

- FACILITIES REVIEWED:

  Residential Health Care Facilities
  Newark Health and Extended Care Facility (Newark, New Jersey) 09/2002 to 05/2012
  Sheepshead Nursing and Rehabilitation Center 09/2002 to 05/2012

- INDIVIDUAL BACKGROUND REVIEW:

**Leah Werner** holds a New York State Nursing Home Administrator's License, license number 04699, for which he is currently registered and in good standing. He also holds a New Jersey Nursing Home Administrator's License, license number 1669, for which he is currently registered and in good standing. He is employed as an assistant administrator at Haym Solomon Home for the aged. He has disclosed ownership interest in the following residential health care facilities:

Newark Health and Extended Care Facility 01/1985 to 04/2012
Sheepshead Nursing and Rehabilitation Center 05/1987 to 04/2012

**Morton Paneth** is the CFO of Newark Health and Extended Care Facility, a nursing home located in Newark, New Jersey. He discloses ownership interest in the following residential health care facilities:

| | |
|---|---|
| Newark Health and Extended Care Facility | 01/1985 to 05/2012 |
| Sheepshead Nursing and Rehabilitation Center | 05/1987 to 05/2012 |

***Character and Competence – Analysis:***
No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations for the Newark Health and Extended Care Facility in Newark, New Jersey and Sheepshead Nursing and Rehabilitation Center for the periods identified above, results in a conclusion of substantially consistent high level of care, since there were no enforcements.

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

## Financial Analysis

Background
The applicant has submitted a draft transfer agreement indicating the transfer is gifted for the change in ownership of Haym Solomon Home for the Aged, LLC, the terms of which are summarized below:

| | | |
|---|---|---|
| *Purpose:* | The total transfer of 27% of the ownership of Haym Solomon Home for the Aged | Interest Transferred |
| *Transferor:* | Anna Paneth | 11% |
| *Transferee:* | Leah Werner | 10% |
| | Morton Paneth | 1% |
| *Transferor:* | Olga Lipschitz | 16% |
| *Transferee:* | Samuel Lipshitz | 4% |
| | Howard Lipschitz | 4% |
| | Elliot Lipschitz | 4% |
| | Pearl Kahn | 4% |

Capability and Feasibility
There is no project cost associated or purchase price with this application.

There are no significant issues of feasibility associated with this application since there is no change in the facility operations. Presented as BFA Attachment A, is a financial summary of Haym Salomon Home for the Aged, LLC. As shown on Attachment A, the facility had an average positive working capital position and an average positive net asset position from 2009 through 2011. Also, the facility has achieved an average operating income of $1,751,244 from 2009 through 2011.

Presented as BFA Attachment B, is the financial summary of Sheepshead Nursing & Rehabilitation Center, LLC. As shown on Attachment B, the facility had an average positive working capital position and an average positive net asset position from 2009 through 2011. Also, the facility achieved an average operating income of $1,224,384 from 2009 through 2011.

Subject to the noted contingency, 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, Haym Salomon Home for the Aged, LLC |
| BFA Attachment B | Financial Summary |

# 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 11th day of October, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a change in the facility's membership and ownership, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY/APPLICANT: |
|---|---|
| 121481 E | Haym Solomon Home for the Aged |

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer agreement that is acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

# New York State Department Of Health

# Memorandum

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel

**DATE:** August 14, 2012

**SUBJECT:** Proposed Certificate of Incorporation of Betty's Be Brave Foundation, Inc.

Betty's Be Brave Foundation, Inc. (hereinafter referred to as the "Foundation") requests Public Health and Health Planning Council approval of its proposed Certificate of Incorporation in accordance with Public Health Law §2801-a (1) and (6), and Not-for-Profit Corporation Law §404 (o).

The Foundation seeks to raise funds for the research and cure of pancreatic cancer at the Roswell Park Alliance Foundation, and to provide scholarship funds for a graduate of Cohoes High School who is planning to enter the medical field. The Foundation seeks to raise funds for these purposes by holding golf tournaments, dinners, walk/run events and coin drops at local banks. The Foundation states in support of approval that there is no organizational relationship between the Foundation and Roswell Park Alliance Foundation. In addition, there appears to be no entities which control or are controlled by the Foundation.

Attached are copies of the proposed Certificate of Incorporation, proposed Bylaws, a letter from Roswell Park Alliance Foundation acknowledging that it will accept funds raised by the Foundation, and a statement from the Foundation setting forth a generalized description of fundraising activities; names, addresses, occupations and affiliations of the Foundation's initial Board of Directors; that no relationship exists between the Foundation and Roswell Park Alliance Foundation; and that no entities control or are controlled by the Foundation.

The Certificate of Incorporation is in legally acceptable form.

Attachments

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Ave. Albany, NY 12231
www.dos.state.ny.us

# CERTIFICATE OF INCORPORATION OF

BETTY'S BE BRAVE FOUNDATION, INC.

*(Insert Corporation Name)*

Under Section 402 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is:

BETTY'S BE BRAVE FOUNDATION, INC.

**SECOND:** The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law.

**THIRD-Part A:** The purpose or purposes for which the corporation is formed are as follows:

THIS CORPORATION IS BEING FORMED FOR CHARITABLE PURPOSES; SPECIFICALLY TO RAISE MONIES IN ORDER TO PROVIDE FUNDING FOR THE RESEARCH AND CURE OF PANCREATIC CANCER AT THE ROSWELL PARK ALLIANCE FOUNDATION, BUFFALO, NEW YORK AND TO PROVIDE SCHOLARSHIP FUNDS FOR A GRADUATE OF COHOES HIGH SCHOOL PLANNING TO ENTER THE MEDICAL FIELD.

Nothing contained in the Certificate of Incorporation shall authorize the corporation to establish, operate or maintain a hospital, a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28, 36,40 and 44, respectively, of the Public Health Law, to provide hospital service or health related service, to establish, operate or maintain an adult care facility, as provided for by Article 7 of the Social Services Law, or to solicit any funds, contributions or grants, from any source, for the establishment or operation of any adult care facility.

FOURTH: The corporation shall be a Type B corporation pursuant to Section 201 of the Not-for-Profit Corporation Law. (*Please insert Type A, B, C or D, as appropriate.*)

FIFTH: The office of the corporation is to be located in the County of ALBANY.
State of New York.

SIXTH: The names and addresses of the initial directors of the corporation are(*a minimum of three are required*):

| | |
|---|---|
| KIMBERLY CESTARO | 14 DIANE COURT, COHOES, NY 12047 |
| ANTHONY CESTARO | 14 DIANE COURT, COHOES, NY 12047 |
| SHELLEY CESTARO | 14 DIANE COURT, COHOES, NY 12047 |
| MICHAEL CESTARO | 14 DIANE COURT, COHOES, NY 12047 |

SEVENTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is:
14 DIANE COURT, COHOES, NY 12047

EIGHTH: *(Corporations seeking tax exempt status may include language required by the Internal Revenue Service in this paragraph. See instructions, paragraph eighth.)*

*(State and Federal exemption language for Type B and C corporations seeking tax exemption):*

Notwithstanding any other provisions of these articles, the corporation is organized exclusively for one or more of the purposes as specified in §501(c)(3) of the Internal Revenue Code of 1954 (the "IRC"), 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.

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 corporation assets on dissolution of the corporation.

No substantial part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by IRC §501(h)), and the corporation shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to another organization exempt under IRC §501(c)(3), or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose, subject to the approval of a Justice of the Supreme Court of the State of New York.

*The incorporator or incorporators must sign the Certificate of Incorporation and type or print his/her name and address.*

KIMBERLY CESTARO
*(Type or print name of incorporator)*

X [signature]
*(Signature)*

14 DIANE COURT, COHOES, NY 12047
*(Address)*

ANTHONY CESTARO JR
*(Type or print name of incorporator)*

X [signature]
*(Signature)*

14 DIANE COURT, COHOES, NY 12047
*(Address)*

SHELLEY CESTARO
*(Type or print name of incorporator)*

X [signature]
*(Signature)*

14 DIANE COURT, COHOES, NY 12047
*(Address)*

MICHAEL CESTARO
(Type or print name of incorporator)

X [signature]
(Signature)

14 DIANE COURT, COHOES, NY 12047
(Address)

# CERTIFICATE OF INCORPORATION
# OF

BETTY'S BE BRAVE FOUNDATION, INC.

*(Insert Corporation Name)*

Under Section 402 of the Not-for-Profit Corporation Law

Filed by: EDWARD J. GROGAN

*(Name)*

P O. BOX 394

*(Mailing address)*

CLIFTON PARK, NY 12065

*(City, State and Zip Code)*

NOTE: This sample form is provided by the New York State Department of State Division of Corporations for filing a certificate of incorporation. This form is designed to satisfy the minimum filing requirements pursuant to the Not-For-Profit Corporation Law. The Division will accept any other form which complies with the applicable statutory provisions. The Division recommends that this legal document be prepared under the guidance of an attorney. The Division does not provide legal, accounting or tax advice. This certificate must be submitted with a $75 filing fee made payable to the "Department of State."

For DOS use only

# BY-LAWS OF BETTY'S BE BRAVE FOUNDATION, INC.

**ARTICLE I - NAME, LOCATION AND MEMBERSHIP**. The name of the Corporation is Betty's Be Brave Foundation, Inc., hereinafter referred to as "Foundation". The principal office of the Foundation shall be located in the City of Cohoes, County of Albany and State of New York, located at 14 Diane Court, Cohoes, New York 12047. The Foundation shall consist of members who are devoted to the elimination or cure of pancreatic cancer. The Foundation shall, from time to time, prescribe the form and manor in which application may be made for membership.

No member shall have any right, title or interest in any of the property or assets, including any earnings or investment income, of this Foundation nor shall any of such property or assets be distributed to any member on its dissolution or winding up.

No member of this Foundation shall be personally liable for any of its debts, liabilities or obligations, nor shall any member be subject to any assessment.

At any meeting of members, every member shall be entitled to vote in person, or by proxy.

All proxies shall be in writing and shall be filed with the Secretary prior to the meeting at which the same are to be used. Such proxies shall only be valid for such meeting or subsequent adjourned meeting thereof. A notation of such proxy shall be made in the minutes of the meeting.

**ARTICLE II – MEETINGS OF MEMBERS.** An annual meeting of members shall be held on the first Monday in the month of May in each year beginning with the year 2012. Meetings shall be held at 14 Diane Court, Cohoes, New York 12047 or at such other place or places as the Board of Directors may designate from time to time by resolution. Appropriate for consideration at such meetings is the election of directors and such other Foundation business as they come before the meeting.

**ARTICLE III – SPECIAL MEETINGS**. Special meetings of members may be called by the President.

**ARTICLE IV – QUORUMS**. The presence in person or by proxy of 50% of the members shall constitute a quorum at all meetings of the members.

**ARTICLE V – MAJORITY VOTE**. All actions shall be taken by vote of the majority of members at a meeting at which a quorum shall be present or represented by proxy.

**ARTICLE VI – ORDER OF BUSINESS AT MEETINGS**. The order of business at all meetings of the members shall follow Robert's Rules of Order and shall be as follows:

a. Roll Call
b. Proof of Notice of Meeting
c. Reading of Minutes of Preceding Meeting
d. Reports of Officers
e. Election Of members of the Board of Directors (when so required)
f. Unfinished Business
g. New Business

**ARTICLE VII – DIRECTORS.** The authorized number of directors of this Corporation shall be four.

**ARTICLE VIII – QUALIFICATIONS OF DIRECTORS.** This must be members of the Corporation.

**ARTICLE IX – TERM OF OFFICE.** The Directors named in the Certificate of Incorporation as the first Board of Directors shall hold office until the annual meeting when an election of Directors shall be held. Thereafter, the term of office of each Director shall be five (5) years.

**ARTICLE X – VACANCIES.** Vacancies of the Board of Directors caused by any reason shall be filled by a vote of the majority of the remaining Directors at a regular or special meeting of the Board of Directors, held for that purpose, promptly after the occurrence of any such vacancy.

**ARTICLE XI – RESIGNATION.** A member of the Board of Directors may resign at any time by giving written notice to the Board or to the President, unless specified in the letter of resignation, the resignation shall take effect immediately upon receipt thereof by the Board and acceptance of the resignation shall not be necessary to make it effective.

**ARTICLE XII – COMPENSATION.** Directors shall not receive any compensation or salary for their services as Directors.

**ARTICLE XIII – REGULAR MEETINGS.** Regular meetings of the Board of Directors shall be held at least twice a year at such place and at such time that is convenient to the Directors as may be designated from time to time by resolution of the Board of Directors.

**ARTICLE XIV – POWERS.** The powers of this Foundation shall be exercised and its properties controlled and its affairs conducted by the Board of Directors, which may however, delegate performance of any duty or the exercise of any powers to such officers and agents as the Board may from time to time by resolution designate.

**ARTICLE XV – OFFICERS.**

**DESIGNATION OF OFFICERS**

The officers of the Corporation shall be President, Vice-President, Secretary and the Treasurer. The Board of Directors may elect or appoint such other officers as it shall deem desirable. Such officers to have the authority to perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, except the office of President and Secretary.

**ARTICLE XVI – ELECTIONS AND TERMS OF OFFICE.** The officers of this Foundation shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and shall have been qualified.

**ARTICLE XVII – REMOVAL.** Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the interest of the Foundation would be best served.

**ARTICLE XVIII – VACANCIES.** The vacancy of any office whether due to death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**ARTICLE XIX – PRESIDENT.** The President shall be the chief executive officer of the Foundation and shall exercise general supervision and control over all activities of the Foundation.

**ARTICLE XX – VICE-PRESIDENT.** The Vice-President shall be capable of performing all the duties of the President. The Vice-President shall also perform such other duties that shall from time to time be imposed upon him by the Board of Directors or the President.

**ARTICLE XXI – SECRETARY.** The Secretary shall cause notices of all meetings to be served as prescribed by these By-Laws, shall record the votes, keep the minutes of all meetings, shall be in charge of the seal, if any, and the corporate records of the Foundation and shall perform such other duties as are assigned to him or her by the President or the Board of Directors.

**ARTICLE XXII – TREASURER.** The Treasurer shall have the custody of all money and securities of the Foundation and shall keep or cause to be kept regular books and records.

**ARTICLE XXIII – COMPENSATION OF OFFICERS.** No officer shall receive any compensation from the association for acting in his or her capacity as an officer, however, any officer may be reimbursed for his or her actual reasonable expenses incurred in the performance of duties as an officer.

**ARTICLE XXIV – CONTRACTS.** The Board of Directors may by resolution duly adopted authorize any officer or officers, agent or agents of the Foundation to enter into any contract or to execute and deliver any instrument in the name of and in behalf of the Foundation.

**ARTICLE XXV – GIFTS AND CONTRIBUTIONS.** The Board of Directors may (a) accept on behalf of the Foundation any contribution, gift, bequest or devise of any type of property for the charitable purposes of the Foundation and on such terms as the Board of Directors shall approve (b) all such funds or property in the name of the Foundation (c) collect and receive the income from such funds for property (d) devote the principal or income from such donations to the Roswell Park Alliance Foundation and/or to the scholarship fund at Cohoes High School.

**ARTICLE XXVI – DEPOSITS.** All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the Board of Directors may select.

**ARTICLE XXVII – AMENDMENT.** The By-Laws of this Foundation may be amended, repealed or added to or new By-Laws may be adopted by the vote or written assent of a majority of the members entitled to vote at a meeting duly called for the purpose according to the certificate.

team CURE
A benefit for Roswell Park Cancer Institute

January, 2012

Betty's Be Brave Foundation
Anthony Cestero Jr.
14 Diane Ct.
Cohoes, NY 12047

Dear Mr. Cestero:

The Roswell Park Alliance Foundation is very pleased to be selected to receive donations from Betty's Be Brave Foundation to help pancreatic cancer research.

The Roswell Park Alliance Foundation is a not-for profit corporation organized to solicit, receive and administer funds for the benefit of Roswell Park Cancer Institute, Buffalo, New York, for use in scientific and medical research, for the delivery of medical care to individuals suffering from cancer and for charitable activities related thereto.

Sincerely,

Tammy Lightcap
Director of Finance & Operations
Roswell Park Alliance Foundation

Generalized description of the fundraising activities to be undertaken by the foundation

*Golf tournaments*
*Dinners*
*5K Walk / Run*
*Coin drop at local banks*

List of the following information regarding the foundation's initial Board of Directors

Name & address
Occupation
Employer name & address
Past & present affiliations with other charitable or non-profit organizations

*President – Kimberly Cestaro*
*Student / Party planner*
*Chuck E Cheese*
*Latham Farms, Latham NY*

*Vice-President Anthony Cestaro Jr*
*Retired*
*Albany Co. Sheriff Dept.*
*Albany, NY*

*Secretary – Shelley Cestaro*
*Secretary*
*Samaritan Hospital*
*Troy, NY*

*Treasurer – Michael Cestaro*
*Delivery driver*
*Awards by Walsh's*
*233 Ontario St. Cohoes, NY*

*None of the above officers have any affiliations with other charitable or non-profit originations*

Identification of the organizational relationship between the foundation and the Article 28 beneficiary

*No relationship*

List of any entities which control or are controlled by the foundation & the nature of such relationships.

*Betty's Be Brave Memorial Scholarship. A $500 yearly scholarship to a graduation senior perusing a career in the medical field.*

*EDWARD J. GROGAN, III*

*ATTORNEY AND COUNSELOR AT LAW*
*P.O. BOX 394*
*CLIFTON PARK, NY 12065*

*TELEPHONE (518) 664-9200*
*E-MAIL: egrogan@nycap.rr.com*

*FAX (518) 664-1207*

Via Facsimile
(518) 473-2019

August 1, 2012

Sandra M. Jensen
Senior Attorney
New York Department of Health
Corning Tower Rm 2484
Empire State Plaza
Albany, NY 12237

RE: Certificate of Incorporation for Betty's Be Brave Foundation, Inc.

Dear Ms. Jensen:

One of the purposes of the foundation is to provide scholarship funds for a graduate of Cohoes High School planning to enter the medical field. The scholarship is not a separate entity under the control of the corporation. It is the intent of the incorporators to provide funds based on the recommendation of Cohoes High School.

Please advise if there is anything further you need.

Very truly yours,

Edward J. Grogan

EJG:lg

Cc: Anthony Cestaro

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of October, 2012, approves the filing of the Certificate of Incorporation of Betty's Be Brave Foundation, Inc., dated as attached.

Division of Home & Community Based Services
Character and Competence Staff Review

| | |
|---|---|
| Name of Agency: | Greene County Public Health Nursing Service |
| Address: | Catskill |
| County: | Greene |
| Structure: | Public |
| Application Number: | 2169-L |

Description of Project:

Greene County Public Health Nursing Service, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency (CHHA) and a diagnostic and treatment center. Greene County Public Health Nursing Service intends to close its CHHA and surrender its operating certificate to the New York State Department of Health. Greene County Public Health Nursing Service is requesting approval to become licensed as a licensed home care services agency to enable the county to provide essential public health nursing services.

The applicant proposes to serve the residents of Greene County from an office located at:
411 Main Street, 3rd Floor, Suite #300, Catskill, New York 12414.

The applicant proposes to provide the following health care service:

Nursing

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency (CHHA) reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

| | |
|---|---|
| Recommendation: | Contingent Approval |
| Date: | August 10, 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 11th day of October, 2012, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY: |
|---|---|
| 2169 L | Greene County Public Health Nursing Service<br>(Greene County) |
| 1991 L | International Home Care Services of NY, LLC<br>(Bronx, Queens, Kings, Richmond, Nassau and New York Counties) |
| 1943 L | Omega Care & Health Inc. d/b/a Right at Home<br>(Nassau and Suffolk Counties) |
| 2166 L | Tioga County Health Department<br>(Tioga County) |
| 1999 L | Gotham Per Diem, Inc.<br>(Bronx, Richmond, Kings, Westchester, New York and Queens Counties) |

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

# October 11, 2012

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

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

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

**CON Applications**

**Acute Care Services – Establish/Construct** **Exhibit #19**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 122004 E | Fletcher Allen Partners/Community Providers, Inc.<br>(Clinton County)<br>Mr. Booth – Interest<br>Dr. Rugge – Abstaining/Interest | Contingent Approval |

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

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 092058 B | HBL SNF, LLC d/b/a The Rehabilitation and Care Institute at White Plains<br>(Westchester County)<br>Mr. Fassler – Recusal<br>Mr. Fensterman – Recusal | Contingent Approval |
| 2. | 121427 E | JOPAL Sayville, LLC d/b/a Petite Fleur Nursing Facility<br>(Suffolk County)<br>Mr. Fensterman - Recusal | Contingent Approval |

| | | | |
|---|---|---|---|
| 3. | 121407 E | 150 Riverside OP, LLC d/b/a The Riverside<br>(New York County)<br>Mr. Fensterman - Recusal | Contingent Approval |

**Certified Home Health Agencies – Establish** **Exhibit #21**

| | **Number** | **Applicant/Facility** | **E.P.R.C. Recommendation** |
|---|---|---|---|
| 1. | 112306 E | Hospitals Home Health Care Inc<br>(Oswego County)<br>Mr. Booth - Interest | Contingent Approval |
| 2. | 121358 E | Catholic Health Care System d/b/a Archcare<br>(Kings County)<br>Dr. Bhat – Recusal<br>Mr. Fassler - Recusal | Contingent Approval |

**Upstate Certified Home Health Agencies - Construction** **Exhibit #22**

| | **Number** | **Applicant/Facility** | **E.P.R.C. Recommendation** |
|---|---|---|---|
| 1. | 121318 E | Northern Lights Home Health Care<br>(St. Lawrence County)<br>Mr. Booth – Interest | Contingent Approval |
| 2. | 122120 E | CenterLight Certified Home Health Agency<br>(Kings)<br>Mr. Fassler – Recusal | Contingent Approval |
| 3. | 122121 E | Jewish Home Lifecare, Community Services<br>(New York County)<br>Mr. Fassler – Interest<br>Ms. Regan - Interest | Contingent Approval |

**Certificate of Amendment of the Certificate of Incorporation** **Exhibit #23**

| | Applicant | E.P.R.C. Recommendation |
|---|---|---|
| 1. | North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation<br>Mr. Fensterman – Recusal<br>Mr. Kraut – Recusal | Approval |

**HOME HEALTH AGENCY LICENSURES** **Exhibit #24**

| | Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|---|
| 1. | 1991 L | International Home Care Services of NY, LLC<br>(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)<br>Ms. Regan – Interest | Contingent Approval |
| 2. | 1943 L | Omega Care & Health Inc. d/b/a Right at Home<br>(Nassau and Suffolk Counties)<br>Ms. Regan – Interest | Contingent Approval |
| 3. | 2166 L | Tioga County Health Department<br>(Tioga County)<br>Mr. Booth – Interest | Contingent Approval |
| 4. | 1999 L | Gotham Per Diem, Inc.<br>(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)<br>Ms. Regan - Interest | Contingent Approval |

# Public Health and Health Planning Council

## Project # 122004-E
## Fletcher Allen Partners/Community Providers, Inc.

***County:*** **Clinton (Plattsburgh)**
***Purpose:*** **Establishment**

***Program:*** **Acute Care Services**
***Submitted:*** **July 2, 2012**

## Executive Summary

### Description

Fletcher Allen Partners, Inc., (FAP) an existing Vermont not-for-profit corporation, is seeking approval to be established as the active parent and sole member of Community Providers, Inc. (CPI) and to be established as the active parent of CPI's subsidiary hospitals, Champlain Valley Physicians Hospital Medical Center (CVPHMC) and Elizabethtown Community Hospital (ECH). Also, CPI is seeking approval to become an active parent of CVPHMC and ECH.

CPI, an existing New York not-for-profit corporation, is the sole member of CVPHMC and ECH:

- CVPHMC is a 333-bed acute care hospital located at 75 Beekman Street, Plattsburgh, in Clinton County; and
- ECH is a 15-bed Critical Access Hospital located at 75 Park Street, Elizabethtown, in Essex County.

CPI was organized in 1984 to develop and coordinate a community and regionally-focused health system in upstate New York to provide cost effective care.

FAP was organized in October 2011, to be the active parent of Fletcher Allen Health Care, Inc. (Fletcher Allen) and Central Vermont Medical Center, Inc. (CVMC). Fletcher Allen is a not-for-profit corporation that functions as the academic medical center affiliated with the University of Vermont and its College of Medicine, based in Burlington, Vermont, providing integrated health care services as an acute care, teaching hospital with 562 licensed beds and a multi-specialty physician practice. CVMC is a not-for-profit corporation that provides health care services as an acute care, community hospital with 122 licensed beds, a 153-bed RHCF and a multi-specialty physician practice located in Berlin, Vermont.

Upon approval CPI, CVPHMC and ECH will become members of FAP's health system and affiliate with Fletcher Allen and CVMC. FAP and CPI will have the ability to exercise active powers over the hospitals and gain oversight with respect to the entities day-to-day operations, set forth in the executed affiliation agreement between all parties. FAP will consist of a Board of twenty-seven that includes thirteen Fletcher Allen appointees, six CPI appointees, five CVMC appointees, and the Presidents of the Medical Staffs of CVMC, Fletcher Allen and CVPHMC. This new corporate arrangement will increase efficiency and improve care coordination in the region.

### DOH Recommendation

Contingent Approval.

### Need Summary

The purpose of this application is to establish a coordinated, highly integrated, four hospital care system under common control of Fletcher Allen Partners, Inc., with the objectives of improving quality, increasing access and lowering the costs of health care in the communities served by the system in Vermont and upstate New York. There will be no change in the daily operations of each health care facility.

### 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 or incremental revenue or expenses associated with this application.

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 executed Certificate of Amendment to the Articles of Incorporation of Fletcher Allen Partners, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the adopted Amended and Restated Bylaws of Fletcher Allen Partners, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Restated Certificate of Incorporation of Community Providers, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the adopted Amended and Restated Bylaws of Community Providers, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
6. Submission of a photocopy of the adopted Amended and Restated Bylaws of Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Elizabeth Community Hospital, acceptable to the Department. [CSL]
8. Submission of a photocopy of the adopted Amended and Restated Bylaws of Elizabeth Community Hospital, acceptable to the Department. [CSL]

## Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

This project seeks to establish Fletcher Allen Partners, Inc. (FAP) as the active parent of Community Providers, Inc. (CPI) and to establish FAP and CPI as the active parents of Champlain Valley Physicians Hospital Medical Center (CVPHMC) and Elizabethtown Community Hospital (ECH). Upon project completion, the certified beds and services at the two hospitals will remain the same.

Fletcher Allen Partners (FAP), a Vermont not-for-profit corporation, is currently the active parent of Fletcher Allen Health Care in Burlington, Vermont and Central Vermont Medical Center in Berlin, Vermont. Community Providers, Inc. (CPI), a New York not-for-profit corporation, is currently the sole member of Champlain Valley Physicians Hospital Medical Center (CVPH) and Elizabethtown Community Hospital (ECH).

In addition to its corporate affiliation with CVPH through Fletcher Allen Partners, Fletcher Allen has contractual affiliations with Alice Hyde Medical Center in Malone, Canton-Potsdam Hospital in Potsdam, and Inter-Lakes Health in Ticonderoga. These affiliations provide a mechanism for regional planning on issues of common concern for each hospital, while allowing them to each maintain independence.

CPI's primary purpose is to develop and coordinate a community and regionally focused health care system that provides appropriate, cost-effective care.

CVPH is the only hospital in Clinton County and is licensed to operate 333 hospital beds and 54 residential health care facility beds. CVPH offers a variety of services at its main site and at 11 hospital extension clinics, including a mobile health screening van. CVPH is certified as an Area Trauma Center and a Level 1 Perinatal Center.

ECH is a Critical Access Hospital in Essex County. The hospital is licensed to operate 15 Special Use beds and offers a range of services at its main site and at three (3) hospital extension clinics.

There are no costs associated with this project. Following completion of the project, CVPH and ECH will remain separate not-for-profit corporations licensed under Article 28 of the New York Public Health Law and will retain separate operating certificates. There will be no change in authorized services or the number or type of beds as a result of the proposed change in governance structure.

## Analysis

Table 1 shows the distribution of beds by services category for CVPH, CVPH Skilled Nursing Facility, and ECH.

**Table 1:**
**Distribution of Certified Beds by Service Category**

| *Bed Category* | *Champlain Valley Physicians Hospital Medical Center* | *Champlain Valley Physicians Hospital Medical Center SNF* | *Elizabethtown Community Hospital* |
|---|---|---|---|
| Coronary Care | 7 | | |
| Intensive Care | 14 | | |
| Maternity | 21 | | |
| Medical /Surgical | 227 | | |
| Pediatric | 10 | | |
| Psychiatric | 34 | | |
| Transitional Care | 20 | | |
| Special Use | | | 15 |
| RHCF | | 54 | |
| *Total* | *333* | *54* | *15* |

*Source: Health Facilities Information System August 2012*

CVPH SNF occupancy rates for 2008, 2009, and 2010 were 98.3 percent, 98.9 percent and 99.0 percent, respectively.

Table 2 shows utilization for CVPH and ECH for 2009, 2010, and 2011.

**Table 2:**
**Distribution of Hospital Utilization Statistics**

| *Service Category* | *2009* | *2010* | *2011* |
|---|---|---|---|
| **CVPH Medical Center** | | | |
| Total inpatient discharges | 11,645 | 11,597 | 10,120 |
| Emergency Department | 47,774 | 46,939 | 44,232 |
| Ambulatory Surgery | | 8,468 | 8,903 |
| | | | |
| **Elizabethtown Community Hospital** | | | |
| Total inpatient discharges | 470 | 378 | 323 |
| Emergency Department | 5,004 | 4,814 | 5,053 |
| Ambulatory Surgery | | 282 | 292 |

*Source: SPARCS 2009 – 2011**
** SPARCS Reporting for 2011 is incomplete.*

### Conclusion
Approval of this application will give FAP and CPI the ability to exercise active powers over the two hospitals and to gain oversight of day-to-day operations, while increasing regional health planning and the opportunity for continued collaboration to meet community needs.

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

## Programmatic Analysis

### Program Proposal
Establish Community Providers, Inc. (CPI) as the active parent of Champlain Valley Physicians Hospital Medical Center, Champlain Valley Physicians Hospital SNF, and Elizabethtown Community Hospital. Establish Fletcher Allen Partners (FAP) as the active parent of CPI and the hospitals and nursing home.

### Character and Competence
All current and proposed board members for CPI and FAP are subject to a character and 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 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 and reports from other state regulatory agencies if applicable. The review found that any citations were properly corrected with appropriate remedial action.

The following disclosures, pertaining to Fletcher Allen Health Care within the last ten years, were made:

- In 2003 Fletcher Allen settled with Vermont and federal law enforcement authorities regarding an investigation into false statements made by executives of Fletcher Allen about the capital costs of a construction project. The settlement included Fletcher Allen acknowledging certain false statements and paying $1 million.

- In November 2011 Fletcher Allen and the NYS Office of Medicaid (OMIG) Inspector General entered into a Stipulation of Settlement in regard to an audit report by OMIG with respect to billings for ambulatory surgery services. The stipulation required Fletcher Allen to pay $510,973 with no admission of liability.

### 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

### 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

There are no project costs or incremental revenue or expenses associated with this application. As shown on BFA Attachment B, a financial summary of CVPHMC, ECH, CVMC and Fletcher Allen, each hospital has maintained positive working capital, positive net assets and experienced positive net income for 2011. As of June 30, 2012, all four hospitals have maintained positive working capital and net assets. ECH, CVMC and Fletcher Allen have experienced positive net income, while CVPHMC generated a net loss of $1,129,797. CVPHMC has indicated the loss was due to vacancies in physician specialties, including General Surgery, Emergency Room and Plastic Surgery. There has been a drop in surgical volumes and a corresponding drop in case mix. Locums were hired to fill many physician vacancies and absences and this came at a much higher cost. The hospital is actively recruiting and one general surgeon will be returning from maternity leave, which will provide some relief. Most ER positions have been filled along with one surgeon. The affiliation with FAP will allow CVPHMC to reduce costs and continue further necessary Physician recruitment.

Based on the preceding, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

### Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Organizational Chart |
| BFA Attachment B | Financial Summaries- Fletcher Allen Partners Inc. |

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October, 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 Fletcher Allen Partners, Inc. (FAP) as the active parent of Community Providers, Inc. (CPI) and establish FAP and CPI as the active parents of Champlain Valley Physicians Medical Center and Elizabethtown Community Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY/APPLICANT: |
|---|---|
| 122004 E | Fletcher Allen Partner/Community Providers, Inc. |

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed Certificate of Amendment to the Articles of Incorporation of Fletcher Allen Partners, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the adopted Amended and Restated Bylaws of Fletcher Allen Partners, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Restated Certificate of Incorporation of Community Providers, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the adopted Amended and Restated Bylaws of Community Providers, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
6. Submission of a photocopy of the adopted Amended and Restated Bylaws of Champlain Valley Physicians Hospital Medical Center, acceptable to the Department. [CSL]
7. Submission of a photocopy of the executed Certificate of Amendment of the Certificate of Incorporation of Elizabeth Community Hospital, acceptable to the Department. [CSL]
8. Submission of a photocopy of the adopted Amended and Restated Bylaws of Elizabeth Community Hospital, 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 # 092058-B

## HBL SNF, LLC
## d/b/a The Rehabilitation and Care Institute at White Plains

***County:*** **Westchester (White Plains)** ***Program:*** **Residential Health Care Facility**
***Purpose:*** **Establishment and Construction** ***Submitted:*** **August 31, 2009**

## Executive Summary

### Description

HBL SNF, LLC, a proposed limited liability company, requests approval to establish and construct a new 160-bed residential health care facility (RHCF) at 116-120 Church Street, White Plains, to be known as The Rehabilitation and Care Institute at White Plains. The 160-bed complement is comprised of 70 contingently approved beds from Hebrew Hospital Home of Westchester, Inc., 18 contingently approved beds from Bethel Nursing Home Company, Inc. and 72 RHCF beds to be acquired from Taylor Care Center (which has been acknowledged by the Department of Health). Contingently approved Project 011102 Bethel Nursing Home Company, Inc. is deemed withdrawn with PHHPC contingent approval of this project. Hebrew Hospital of Westchester, Inc.'s Project 021033 has already been withdrawn in concert with this project.

The proposed members of HBL SNF, LLC will be Westchester Health Care Properties I, LLC (51%), Hebrew Hospital Home of Westchester, Inc. (39%) and Bethel Nursing Home Company, Inc. (10%).

Westchester Health Care Properties I, LLC is comprised of Lizer Jozefovic (50%) and Mark Neuman (50%), who are established operators of the following RHCFs in New York State: Skyview Rehabilitation and Health Care Center, a 192-bed proprietary RHCF in Croton on the Hudson; Waterview Hills Rehabilitation and Nursing Center, a 130-bed proprietary RHCF in Purdys; Salem Hills Rehabilitation & Nursing Center, a 126-bed proprietary RHCF in Purdys; and Park Manor Acquisition II, LLC d/b/a Middletown Park Rehabilitation & Health Care Center, a 230-bed proprietary RHCF in Middletown.

Total project costs are estimated at $56,631,759.

### DOH Recommendation

Contingent approval.

### Need Summary

The facility will be built in the White Plains area, which is shown to have a higher than normal minority population and has a high poverty population compared to the surrounding areas. This increased demand to treat the local Medicaid eligible population will be met by HBL SNF.

Eighty-eight of the applicant's proposed 160 beds have undergone the CON review process and were contingently approved, but have not become operational.

### Program Summary

As currently advanced, the design of the nursing home is generally code compliant. However, refinements in the final design could promote greater efficiencies and improve the resident environment. In addition, final design should demonstrate sufficient office and storage space in the nursing home, including resident personal storage.

### Financial Summary

Project costs will be financed via land value of $4,528,333, equity of $9,863,426, and a HUD mortgage of $42,240,000 (30 yrs. @ 5.5%).

| | | |
|---|---|---|
| Budget: | *Revenues:* | *$ 21,115,663* |
| | *Expenses:* | *20,168,415* |
| | *Gain/(Loss):* | *$ 947,248* |

Subject to the noted contingencies, 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. Withdrawal of Project 011102 Bethel Nursing Home Company, Inc.[PMU]
3. Submission of an affidavit signed by the applicant affirming that the facility will be accepting "hard to place patients" which include but are not limited to undocumented patients or charity care patients, patients with behavioral issues, and any other patients that hospitals are having a difficult time placing. [RNR]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of PHHPC 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]
5. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:

    a) Reach out to hospital discharge planners to 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 substantial progress with the implement of the plan. The plan 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;
        - Other factors as determined by the applicant to be pertinent; and
        - Documents showing which patients were accepted from hospital waiting lists and which are still on the waiting lists. [RNR]

    The DOH reserves the right to require continued reporting beyond the two year period.

6. Submission and acceptable programmatic review of a new name which is more descriptive of a nursing home. [LTC]
7. Submission and programmatic review and approval of the final floor plans, including layouts showing the placement of furniture, equipment and storage for all types of resident rooms. [LTC]
8. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
9. Submission of an executed working capital loan agreement that is acceptable to the Department. [BFA]
10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
11. Submission of a photocopy of an executed operating lease agreement between White Plains Healthcare Properties I, LLC and the applicant, which is acceptable to the Department. [BFA, CSL]
12. Submission of a photocopy of the Articles of Organization of HBL SNF, LLC, which is acceptable to the Department. [CSL]

13. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of HBL SNF, LLC which is acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed Operating Agreement of HBL SNF, LLC, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the bylaws of Hebrew Hospital Home of Westchester and Bethel Nursing Home Company. [CSL]
16. Submission of a list providing the name of each member, membership interest, and percentage ownership interest in Westchester Health Care Properties I, LLC. [CSL]
17. Submission of a list of all managers of Westchester Health Care Properties I, LLC. [CSL]
18. Submission of a photocopy of the Articles of Organization and any amendments thereto, and the Operating Agreement of Westchester Health Care Properties I, LLC, which is acceptable to the Department. [CSL]
19. Submission of a photocopy of a Development Agreement between HBL SNF, LLC and White Plains Healthcare Properties I, LLC, which is acceptable to the Department. [CSL]

**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 April 1, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
3. Annual reporting of the number of admissions of "hard to place" patients and of any and all hospital waiting lists for such patients in Westchester County. [RNR]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Westchester Health Care Properties Inc. is a proposed residential health care facility to be established at 116 – 120 Church Street White Plains, 10601, in Westchester County. The facility plans to establish a 160-bed RHCF via purchase of 72 RHCF beds from Ruth Taylor Care, 70 RHCF beds from Hebrew Home, and 18 beds from Bethel Nursing Home, for a total of 160.

## Analysis

| ***Westchester County Bed Need*** | |
|---|---|
| 2016 Projected Need | 6,716 |
| Current Beds | 6,556 |
| Beds Contingently Approved | 18 |
| Total Resources | 6574 |
| Unmet Need | 142 |

Included in the current bed count is the bed complement for the Home for the Aged Blind which has 199 beds but ceased operations four years ago. The operating certificate has not yet been surrendered. All 199 beds are not in use, thus creating a need for 341 beds. The 18 beds indicated above as "Beds Contingently Approved " are the contingently approved beds for Bethel Nursing Home that are now part of this application. Utilization in Westchester County for 2008, 2009, and 2010 was 93.17%, 93.32%, and 92.85%, respectively.

Notwithstanding that there is an indication of need in a planning area for additional residential health care facility beds as determined in accordance with Subdivisions (d) or (e) of 10 NYCRR 709.3, there shall be a rebuttable presumption that there is no need for any additional residential health care facility beds in such planning area if the overall occupancy rate for existing residential health care facility beds in such planning area is less than 97% based on the most recently available data. It shall be the responsibility of the applicant in such instances to demonstrate that there is a need for additional RHCF beds despite the less than 97% occupancy rate in the applicant's planning area utilizing the factors set forth in Subdivision (h) of 10 NYCRR 709.3.

The applicant addressed the above regulation to the Department's satisfaction in view of the following factors:

- The new facility will accept "difficult to place patients", who are patients classified by local hospital as follows:
  - Patients who exhibit psychiatric behaviors but also have primary medical diagnosis.
  - Patients who are undocumented.
  - Patients with a history of substance abuse but have a primary medical diagnosis.
  - Patients with a history of developmental and/or physical disabilities but have a primary medical diagnosis.
  - Patients who have no means of financial support and require charity care.
  - Short term restorative patients who require seven days per week physical therapy and/or occupation therapy services.

- Nathan Miller, a 65 bed nursing facility located in White Plains, closed in 2011, creating a local community need in the area.

- King Street Nursing Home, a facility located within the service area of the proposed facility, has been well below the 75% Medicaid Access standard, posing an increased need for a facility that accepts Medicaid patients.

- Additionally, there has been an increase of 28.7% in the over 85 population in Westchester County, causing a need for additional nursing home resources in the coming years.
- HBL SNF, LLC will be required to provide access to Medicaid patients per the Medicaid Access regulation.

### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission polices and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

### Conclusion

The applicant will provide services for an increasing elderly population and patients that are not accepted by other facilities because of their special needs. The applicant has demonstrated the existence of sufficient local factors to show a need for this facility.

### Recommendation

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

## Programmatic Analysis

### Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | N/A | The Rehabilitation and Care Institute at White Plains |
| *Address* | N/A | 116-120 Church Street<br>White Plains, NY. 10601 |
| *RHCF Capacity* | N/A | 160 |
| *ADHCP Capacity* | N/A | N/A |
| *Operator Type* | N/A | LLC |
| *Operator Class* | N/A | Proprietary |

| | *Existing* | *Proposed* |
|---|---|---|
| *Operator* | N/A | HBL SNF, LLC<br>Members<br>Westchester Health Care Properties I, LLC……....51%<br>Hebrew Hospital Home of Westchester, Inc……..39%<br>Bethel Nursing Home Company, Inc……10%<br>Westchester Health Care Properties I, LLC (Proprietary)<br>Members:<br>Mark Neuman……50%<br>Lizer Jozefovik……50%<br>Hebrew Hospital Home of Westchester, Inc. (Voluntary)<br>Board of Directors:<br>Bertram Gelfand<br>Michael Gelfand<br>Charles Goldberger<br>Arnold Goldstein<br>Donna Jakubovitz<br>Michael Laub<br>Marvin Lifson<br>Alan Pearce<br>Edward Schecter<br>Leon Silverman<br>David Spector<br>George Strauch<br>Bethel Nursing Home Company, Inc. (Voluntary)<br>Board of Directors:<br>John Carrington<br>Robert Elliott<br>James Holden, Jr.<br>Catherine Pelczer-Wissner<br>Andrew Samalin<br>John Watkins Jr. |

Character and Competence Review

- FACILITIES REVIEWED:

| | |
|---|---|
| Residential Health Care Facilities | |
| Sky View Rehabilitation and Health Care Center | 10/2003 to present |
| Salem Hills Rehabilitation and Health Care Center | 10/2005 to present |
| Waterview Hills Rehabilitation and Health Care Center | 10/2005 to present |
| Middletown Park Rehabilitation and HealthCare Center | 04/2010 to present |
| Long Island Care Center | 01/1992 to present |
| Brooklyn United Methodist Church Home | 09/2002 to present |
| The Bethel Nursing Home Company | 09/2002 to present |
| Bethel Nursing and Rehabilitation Center | 09/2002 to present |
| Hebrew Hospital Home of Westchester | 09/2002 to present |
| Westchester Meadows | 09/2002 to present |
| Out-of-State Residential Health Care Facilities | |
| Chapin Hill Nursing and Rehabilitation Center (NJ) | 01/2010 to present |
| West Broward Care Center (FL) | 01/2010 to present |
| Lackawanna Health & Rehab Center (PA) | 11/2011 to present |
| New York State Hospitals | |
| New York Methodist Hospital | 09/2002 to present |
| Adult Care Facility / Enriched Housing Program | |
| Fieldstone at Westchester Meadows | 09/2002 to present |
| Licensed Home Care Services Agency | |
| HHH Home Care, Inc. | 09/2002 to present |

- INDIVIDUAL BACKGROUND REVIEW:

***Westchester Health Care Properties, Inc.***

**Mark Neuman** is the controller of the Long Island Care Center. He has disclosed ownership interest in the following residential health care facilities:

| | |
|---|---|
| Long Island Care Center | 01/1992 to present |
| Sky View Rehabilitation and Health Care Center | 10/2003 to present |
| Salem Hills Rehabilitation and Health Care Center | 10/2005 to present |
| Waterview Hills Rehabilitation and Health Care Center | 10/2005 to present |
| Middletown Park Rehabilitation and Health Care Center | 04/2010 to present |
| Chapin Hill Nursing and Rehabilitation Center (Red Bank, NJ) | 01/2010 to present |
| West Broward Care Center (Plantation, FL) | 01/2010 to present |
| Lackawanna Health and Rehab Center (Lackawanna, PA) | 11/2011 to present |

**Lizer Jozefovic** holds a NYS Nursing Home Administrator License which is currently involuntary inactive. He has disclosed ownership interest in the following residential health care facilities:

| | |
|---|---|
| Sky View Rehabilitation and Health Care Center | 10/2000 to present |
| Salem Hills Rehabilitation and Health Care Center | 10/2005 to present |
| Waterview Hills Rehabilitation and Health Care Center | 10/2005 to present |
| Middletown Park Rehabilitation and Health Care Center | 10/2010 to present |
| Chapin Hill Nursing and Rehabilitation Center (Red Bank, NJ) | 01/2010 to present |
| West Broward Care Center (Plantation, FL) | 01/2010 to present |
| Lackawanna Health and Rehab Center (Lackawanna, PA) | 11/2011 to present |

***Board of Directors - Hebrew Hospital Home of Westchester, Inc.***

**Hon. Bertram Gelfand** is a retired NYS licensed attorney and is in good standing. He serves on the Board of Directors for the Hebrew Hospital Home of Westchester.

**Michael Gelfand** is a New York, New Jersey, Connecticut, and Massachusetts licensed architect and is in good standing. He is on the Board of Directors for the Hebrew Hospital Home of Westchester.

**Charles Goldberger** is a NYS licensed attorney and is in good standing. He is the vice-president for the Board of Directors for Hebrew Hospital Home of Westchester.

**Arnold Goldstein** is the chairman to Samson Management, a real-estate management company. He is the chairman of the Board of Directors for Hebrew Hospital Home of Westchester. Mr. Goldstein also discloses that he is a Director, Secretary, and Treasurer for HHH Home Care, Inc., a licensed home care services agency (LHCSA) from 09/2002 to present. Mr. Goldstein also discloses that he is the chairman of the Board of Directors of Westchester Meadows / Hebrew Hospital Senior Housing, a continuing care retirement community (CCRC), from 09/2002 to present.

**Donna Jakubovitz** is vice president of Joremi Enterprises, a real estate management company. She is on the Board of Directors for Hebrew Hospital Home of Westchester.

**Michael Laub** is the owner of Michael Laub LLC, a real estate management company. He is the president of the Board of Directors for Hebrew Hospital Home of Westchester.

**Marvin Lifson** is an inactive NYS licensed Professional Engineer. He has been retired for over 10 years. Mr. Lifson serves on the Board of Directors for the Hebrew Hospital Home of Westchester.

**Alan Pearce** is a NYS licensed attorney and is in good standing. He discloses that he is a member of the Board of Directors, Secretary, and Treasurer for the Hebrew Hospital Home of Westchester. Mr. Pearce also discloses that he

is the president of the Board of Directors of HHH Home Care, Inc., a licensed home care services agency (LHCSA) from 09/2002 to present.

Mr. Pearce also discloses that he is a member of the Board of Directors, Secretary, and Treasurer of Westchester Meadows / Hebrew Hospital Senior Housing, a CCRC, from 09/2002 to present.

**Rabbi Edward Schecter** has been employed by the Temple Beth Shalom for over 10 years. He is a board member of the Hebrew Hospital Home of Westchester.

**Leon Silverman** is a New York and Connecticut licensed real estate broker, with license in good standing. He is the chairman to Silverman Realty Group, Inc., a real estate brokerage firm. He serves on the Board of Directors for the Hebrew Hospital Home of Westchester.

**David Spector** is a retired New York licensed associate broker, with license in good standing. He serves on the Board of Directors for the Hebrew Hospital Home of Westchester.

**George Strauch** is a NYS licensed attorney and is in good standing. He is on the Board of Directors for the Hebrew Hospital Home of Westchester.

***Board of Directors - Bethel Nursing Home Company, Inc.***

**Rev. Dr. John Carrington** is retired, formerly employed as Executive Director/CEO of the United Methodist City Society. He is on the Board of Directors for the Bethel Nursing Home Company. Dr. Carrington also discloses that he is a trustee for Brooklyn United Methodist Church Home, from 1968 to present. He also discloses that he is a trustee for New York Methodist Hospital, 1968 to present.

**Robert Elliott** is a self-employed consultant for community and economic development. He serves as vice-chairman of the Board of Directors for the Bethel Nursing Home Company.

**James Holden Jr.** is a NYS licensed attorney and is in good standing. He is the chairman of the Board of Directors for the Bethel Nursing Home Company.

**Catherine Pelczar-Wissner, M.D.** is a licensed medical doctor, in good standing and consulting physician for Industrial Medicine Associates. She is on the Board of Directors for the Bethel Nursing Home Company.

**Andrew Samalin** is a certified financial planner as well as a registered investment advisor with licenses in good standing. He is a board member and treasurer for the Bethel Nursing Home Company.

**John Watkins Jr.** is a NYS licensed attorney and is in good standing. He is the secretary for the Board of Directors for the Bethel Nursing Home Company. He also discloses that he is a member of the Board of Directors of Bethel Nursing and Rehabilitation Center, from 01/1993 to present.

***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 Middletown Park Rehabilitation and Health Care Center, Salem Hills Rehabilitation and Health Care Center, Waterview Rehabilitation and Health Care Center, Long Island Care Center, Hebrew Hospital Home of Westchester, and Westchester Meadows for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the Sky View Rehabilitation and Health Care Center for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order for surveillance findings on August 24, 2005. Deficiencies were found under 10 NYCRR 415.11(2)(i-iii): Resident Assessment and Care Planning: Comprehensive Care Plans and 10 NYCRR 415.12 – Quality of Care.

A review of operations for Sky View Rehabilitation and Health 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 the Bethel Nursing Home Company for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order for surveillance findings on June 18, 2003. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

- The facility was fined $12,000 pursuant to a Stipulation and Order for surveillance findings on December 17, 2010. Deficiencies were found under 10 NYCRR 415.11(c)(2)(i-iii): Right to Participant Planning – Care Revise CP; and 10 NYCRR 415.12(h)(1)(2): Quality of Care – Accident Hazard and Supervision.

A review of operations for the Bethel Nursing Home Company 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 the Bethel Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on May 19, 2003. Deficiencies were found under 10 NYCRR 415.12: Quality of Care; 10 NYCRR 415.12(j): Quality of Care – Hydration; 10 NYCRR 415.15(b)(1)(i)(ii): Medical Services – Physician Services; 10 NYCRR 415.26: Organization and Administration; 10 NYCRR 415.26(b)(3): Organization and Administration – Governing Body; and 10 NYCRR 415.15(a): Medical Services – Medical Director.
- The facility was fined $2,000 pursuant to a Stipulation and Order for surveillance findings on August 30, 2006 and January 30, 2007. Deficiencies were found under 10 NYCRR 415.12(h)(2): Quality of Care – Accidents; and 10 NYCRR 415.12(c)(1)&(2): Quality of Care – Pressure Sores.

A review of operations for Bethel Nursing and Rehabilitation 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 the Brooklyn United Methodist Church Home for the period identified above reveals the following:

- The facility was fined $22,000 pursuant to a Stipulation and Order for surveillance findings on March 8, 2012. Deficiencies were found under 10 NYCRR 415.12: Quality of Care - Highest Practicable Potential; 10 NYCRR 415.12(l)(1): Quality of Care - Significant Medication Errors; and 10 NYCRR 415.27(a-c): Quality Assessment and Assurance.

A review of operations for the Brooklyn United Methodist Church Home 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 the New York Methodist Hospital for the period identified above reveals the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order in April 2007 for a “Delay and Recognition” incident relating to the death of an infant suffering from a hernia.

A review of operations for the New York Methodist Hospital 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 HHH Home Care, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Fieldstone at Westchester Meadows for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of information provided by the New Jersey Department of Health for the Chapin Hill Nursing and Rehabilitation Center located in Red Bank, New Jersey for the period identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of information provided by the Florida Department of Health for the West Broward Care Center located in Plantation, Florida for the period identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of information provided by the Pennsylvania Department of Health for the Lackawanna Health and Rehab Center located in Lackawanna, Pennsylvania for the period identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

***Character and Competence – Conclusion:***
The Establishment Review of HBL SNF, LLC is acceptable. However the name "The Rehabilitation and Care Institute at White Plains" is not descriptive of a nursing home. As a contingency of approval, a modified facility name will be required.

Project Review

- PROGRAM REVIEW:

HBL SNF, LLC proposes to construct a new 160 bed skilled nursing facility (SNF) to be known as The Rehabilitation and Care Institute at White Plains (HBL). The nursing home will consist of five floors with the nursing units distributed on the four upper floors. The nursing units will range in size from 36 to 42 beds, and will be programmed for different sub-groups. The second floor will be constructed as a short term rehabilitation unit of 36 beds, complete with dedicated rehabilitation gym serving the nursing unit. The third floor will be designed as a conventional 40 bed unit, identified in the narrative as serving a "sub-acute step down" population. The fourth and fifth floors will be the largest nursing units with 42 beds, with the fourth floor programmed to serve a dementia population and the fifth floor programmed as a conventional geriatric floor.

- PHYSICAL ENVIRONMENT:

HBL intends to construct a 99,694 square foot building at Baker Avenue and Church Street in downtown White Plains. The building will occupy a rectangular site and consist of five floors, with basement and mechanical penthouse. The nursing units are located on the second through the fifth floors, and arrayed in an "L" configuration. The nursing home will include 13% single bedrooms, and the double bedrooms will utilize a standard toe to toe layout to guarantee adequate light for both residents. Recreational space, as well as dining and rehabilitation, is generally located to the inside of the building.

Entrance into the nursing home will be made from the first level, which is on grade, from either the vehicle drop-off or parking garage which occupies half of the ground level. The lobby and waiting area are flanked by the admissions parlor and offices. The main elevator bank is located in the center of the floor, opposite the central dining rooms, and adjacent to an activity and multipurpose room. A terrace leads out from the main dining room to provide outdoor space for the residents.

The second floor is intended to serve residents requiring short term rehabilitation, and includes a dedicated rehabilitation gym to serve the floor. The nursing unit contains 36 beds divided into 13 doubles and 10 singles. The central nurses station and tub and shower room are located on either side of the elevator bank, in the middle of the nursing unit. Behind the elevators is the on-floor dining room, with the rehabilitation gym/ ADL training room and rooftop gardens in back of the dining area. Access into the rehabilitation gym, and the overall configuration of the area, has been the subject of several discussions. The current plan places a corridor around the perimeter of the 26 space dining room, which also divides the dining room from the adjacent activities room. Additional activities and recreation space is provided in a generously sized lounge in the corner of the unit.

The third floor layout is similar to the second floor, containing 40 beds divided into 17 doubles and 6 singles. An exterior patio, located on top of the second floor gym, is accessed from the on-floor dining area, with the perimeter corridor connecting it to the elevator bank.

The fourth and fifth floor layouts are identical, with each nursing unit containing 42 beds divided into 20 doubles and 2 singles. The design of these floors is similar to the third floor nursing unit, with two doubles replacing singles in the lower nursing unit. An additional shower room and dressing area is fitted into space housing a single bedroom on the third floor. Also, In lieu of the gardens areas which are only available to the residents of the lower floors, residents of the fourth and fifth floors are given use of a deck area accessed from the interior activities area. Additional detail regarding the fencing and rails to be installed to ensure the safety of residents using the decks, and the protocols regarding their use in inclement weather, will be required at the final plan review stage.

Residents of the three upper floors will travel to the basement area for rehabilitation services, in a gym of greatly reduced size in comparison to the short term rehab gym. The barber and beauty salon has also been located in the basement area, as well as staff dining room and lounge, and employee lockers.

***Project Review – Analysis:***
Constrained by its downtown site, the design of HBL attempts to maximize the size of the nursing units and retain sufficient resident services. The inclusion of covered parking on the ground floor limits the availability of common space for resident amenities and socialization, and creates circulation issues on the upper floors. Resident services, including the beauty parlor and rehabilitation area, are located in the basement, due to the limited floor area of the ground level, which inhibit their appeal and therapeutic value to the residents. The use of off-site parking, or the relocation of the parking garage to the undersized basement area, would permit additional resident amenities to be located on the ground floor, and improve accessibility to recreation and socialization space.

A re-consideration of the design of the nursing units, perhaps creating “U” or irregular-shaped nursing units, would provide increased square footage on the floors and ease potential congestion. While the program decisions to create a self-contained short term rehab unit on the second floor drives the current design of the nursing home, especially the upper floor nursing units, the second floor would also benefit from a re-design. The placement of the dedicated rehab gym and dining area away from the center of the nursing unit creates accessibility issues, which are mirrored on the upper floors. The suggested design change would allow the dining room to move to a more central or corner location reducing traffic on the unit. Similarly, the dedicated rehab gym could be situated adjacent to the resident bedrooms, creating a more integrated program. The upper floors would similarly benefit from the design change with the ability to offer more single bedrooms, without detracting from storage or service functions. The additional square footage could also foster a more homelike environment, for example preparing meals on the floor and serving them family style, with the central dining room offering a more social dining experience.

As currently advanced, the design of the nursing home is generally code compliant. However, refinements in the final design could promote greater efficiencies and improve the resident environment. In addition, final design should demonstrate sufficient office and storage space in the nursing home, including resident personal storage.

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

## Financial Analysis

### Development Agreement
On March 30, 2012, HBL SNF, LLC (operator/Tenant) and White Plains Healthcare Properties I, LLC(Developer) were subject to a draft Development Agreement, whereas Tenant has requested the Developer to design and construct a 160 Bed Skilled Nursing Facility at 116-120 Church Street in White Plains. Presented as BFA Attachment C is the organizational chart of White Plains Properties I, LLC, which has no relationship to the tenant.

### Lease Agreement
Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

*Lessor:* White Plains Healthcare Properties I, LLC
*Lessee:* HBL SNF, LLC
*Term:* 30 year term

*Rental:* Equal to debt service on Mortgage of $239,834 per month ($2,878,008 annually) plus $1,440,000 per year based on a return of cash equity to the project's investors
*Other:* Lessee pays insurance, maintenance and utilities

White Plains Healthcare Properties I, LLC, landlord and developer, is comprised of CCC Equities, LLC (80%), and Project Equity Consulting (20%). Presented as BFA Attachment C is the organizational Chart for Landlord and Operator.

## Total Project Cost and Financing

Total cost to build and construct the proposed 160 bed facility is projected to be $56,631,759, itemized as follows:

| | |
|---|---|
| Land Acquisition | $ 4,528,333 |
| New Construction | 37,282,722 |
| Design Contingency | 1,864,136 |
| Construction Contingency | 1,864,136 |
| Architect/Engineering Fees | 2,982,618 |
| Construction Manager Fees | 745,654 |
| Other Fees(Consultant) | 750,000 |
| Movable Equipment | 1,480,000 |
| Financing Costs | 2,112,000 |
| Interim Interest Expense | 2,710,400 |
| CON Application Fee | 2,000 |
| CON Processing Fee | 309,760 |
| Total Project Cost | $56,631,759 |

Project cost is based on a construction start date of August 1, 2013, with a twenty month completion period. Project cost per bed, exclusive of CON fees, is $352,000 per bed and is within the geographic per bed limitation for Westchester County.

Financing for the project is anticipated as follows:

| | |
|---|---|
| Land Value | $4,528,333 |
| Cash | 9,863,426 |
| HUD Mortgage (5.5% over 30 year term) | 42,240,000 |
| Total Funds | $56,631,759 |

The land value is based on the actual Bargain and Sale Deed and registered with Westchester County. The land was sold to White Plains Healthcare Properties I, LLC on September 3, 2010.

CCC Equities will be providing the $9,863,426 cash requirement for total project costs. Presented as BFA Attachment B is the net worth statement for CCC Equities, which shows sufficient funds available.

## Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2012 dollars, for the first and third years subsequent to facility being built:

RHCF

| | First Year Total | Third Year Total |
|---|---|---|
| Revenues: | | |
| Medicaid | $8,887,323 | $9,985,353 |
| Medicare | 4,019,580 | 7,326,280 |
| Private Pay/Other | 2,411,748 | 3,804,030 |
| Total Revenues | $15,318,651 | $21,115,663 |

| | | |
|---|---|---|
| Expenses: | | |
| Operating | $11,952,795 | $15,537,460 |
| Capital | 4,621,877 | 4,630,955 |
| Total Expenses | $16,574,672 | $20,168,415 |
| Net Income(Loss) | $(1,256,021) | $ 947,248 |
| Utilization:(patient days) | 44,662 | 56,356 |
| Occupancy | 76.48% | 96.50% |

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

- The capital component of the Medicaid rate is based on the interest, amortization and return on equity reimbursement methodology.
- Medicare and private pay revenues are based on current payment rates.
- Overall utilization for year one and year three is projected at 76.48% and 96.5% respectively, while utilization by payor source is expected as follows:

| Payor | First Year | Third Year |
|---|---|---|
| Medicaid | 73.0% | 65.0% |
| Medicare | 15.0% | 20.0% |
| Private Pay | 11.5% | 14.5% |
| Charity Care | 0.5% | 0.5% |

- Year One utilization is based on a start up year and is not at full capacity.

Capability and Feasibility

Total project costs will be met through $4,528,333 in land value, $9,863,426 from equity, and $42,240,000 from a HUD mortgage at stated terms. A letter of interest from Red Mortgage Capital, LLC has been submitted by the applicant. Equity will be provided through CCC Equities, LLC, which BFA Attachment B shows CCC Equities, LLC has sufficient funds.

Working capital requirements for the RHCF are estimated at $3,361,402 based on two months of third year expenses. Financing will be provided as 50% owner's equity of $1,680,701 and 50% bank loan of $1,680,701. BFA Attachment A shows that HBL SNF, LLC has sufficient equity. A letter of interest has been submitted by Capital One Bank for a term of five years at 7% interest. Presented as BFA Attachment F is the Pro-forma Balance Sheet for HBL SNF, LLC as of the first day of operations with member's equity of $1,680,701.

The submitted budget indicates a net loss of $1,256,021 in the first year and a net profit of $947,248 in the third year. Projected income includes the applicant's estimated impact of the Statewide Pricing Reimbursement methodology to RHCF Medicaid rates. The operating expenses and the projected case mix level of acuity are based on the historical experiences of member owned and similar bed complement RHCFs in Westchester County; Sky View Nursing and Rehabilitation Center and Hebrew Hospital Home of Westchester, Inc. The budget appears reasonable.

The applicant hired a firm to research the demand for nursing home services in Westchester County and create a demand analysis. The analysis indicates that national utilization rates were applied to the estimated population for each age group in Westchester County. The analysis supports an increase in nursing home utilization for people ages 65 and older, of which the majority of the residents are in the 85 and older age group. While the projected bed need is higher than the Department of Health's unmet bed need of 142, the study more than supports demand for these incremental RHCF beds. The new facility will accept "difficult to place patients," who are patients classified by local hospitals as follows: patients who exhibit psychiatric behaviors but also have primarily medical diagnosis; patients who are undocumented; patients with a history of developmental and/or physical disabilities but have a primary medical diagnosis; patients who have no means of financial support and require charity care and short term restorative patients who require seven days per week physical therapy and/or occupational therapy services.

Staff notes that the individual owners, Mark Neuman and Lizer Jozefovic, have had history of achieving high occupancy in the nursing homes that they operate. They acquired Park Manor Rehab & Health Center on March 6, 2010, renaming it Middletown Park Rehabilitation and Health Care Center (BFA Attachment J), and achieved occupancy of 96.60% and 96.70% during 2010 and 2011, respectively. From 2007 through 2009, Park Manor Rehab & Health Center had occupancy of 89.73% (2007); 88.70% (2008) and 86.94% (2009). In regard to the filling up of the new beds, the applicant anticipates one 40 bed unit be brought on line at a time, over a period of 4-6 months. This fill up is reflective in the applicant's first year projected occupancy of 76.48%.

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 D, Hebrew Hospital Home of Westchester, Inc. has experienced negative working capital in 2009 and 2011 and maintained positive net equity in 2009-2011 and an average loss from operations of $1,081,710 over the 2009-2011 periods. The losses experienced in 2009-2011 are due to the current revenue stream not being sufficient to support current operations; therefore, management has decided to cut operating expenses in order to at least bring the RHCF to a break-even point by reducing nursing costs without interruption of patient care, renegotiation of outside contracts, reduction of employee benefit funds by increased employee participation, renegotiation of union contracts, and reduction of administrative staffing.

As shown on BFA Attachment E, The Bethel Nursing Home Company, Inc. has experienced negative working capital and net equity, and an average loss from operations of $358,517 over the 2009-2010 periods. In 2011, The Bethel Nursing Home Company, Inc. maintained a net profit from operations of $210,749. The losses experienced in 2009-2010 were eliminated in 2011, since management has taken steps to reduce their operating costs, such as closing their kitchen and having meals brought in through their sister RHCF, Bethel Nursing and Rehabilitation Center, retaining contracted services for Physical Therapy and other rehabilitative services, and the increase in Medicare days and rates. Administration has also reduced staffing based on the reduction in occupancy.

As shown on BFA Attachment G, Sky View Rehabilitation and Health Center has experienced negative working capital and maintained positive net equity and an average net income from operations of $896,813 over the 2009-2011 periods.
The negative working capital is due to an interest rate swap agreement entered into to protect the RHCF from increased interest rates.

As shown on BFA Attachment H, Waterview Hills Rehabilitation and Nursing Center has maintained positive working capital and net equity on average net income from operations of $624,161 over the 2009-2011 periods.

As shown on BFA Attachment I, Salem Hills Rehabilitation and Nursing Center has maintained positive working capital and net equity on average net income from operations of $442,350 over the 2009-2011 periods.

As shown on BFA Attachment J, Middletown Park Rehabilitation and Health Care Center has maintained positive working capital and net equity on net income from operations of $759,300 over the 2010-2011period.

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

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

## Attachments

BFA Attachment A Net Worth Statement for Westchester Health Care Properties I, LLC

| | |
|---|---|
| BFA Attachment B | Net Worth Statement for CCC Equities, LLC |
| BFA Attachment C | Organizational Chart for Proposed Landlord and Operator of HBL SNF, LLC |
| BFA Attachment D | Financial Summary for Hebrew Hospital Home of Westchester, Inc. |
| BFA Attachment E | Financial Summary for Bethel Nursing Home Company, Inc. |
| BFA Attachment F | Pro-forma Balance Sheet |
| BFA Attachment G | Financial Summary for Sky View Rehabilitation & Health Care Center, LLC |
| BFA Attachment H | Financial Summary for Waterview Hills Rehabilitation & Nursing Center |
| BFA Attachment I | Financial Summary for Salem Hills Rehabilitation & Nursing Center |
| BFA Attachment J | Financial Summary for Middletown Park rehabilitation & Health Care Center |
| DHFP 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 11th day of October, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new 160-bed residential health care facility at 116-120 Church Street, White Plains, 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: |
|---|---|
| 092058 B | HBL SNF, LLC d/b/a The Rehabilitation and Care Institute at White Plains |

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. Withdrawal of Project 011102 Bethel Nursing Home Company, Inc.[PMU]
3. Submission of an affidavit signed by the applicant affirming that the facility will be accepting "hard to place patients" which include but are not limited to undocumented patients or charity care patients, patients with behavioral issues, and any other patients that hospitals are having a difficult time placing. [RNR]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of PHHPC 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]
5. Submission of a plan to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:

    a) Reach out to hospital discharge planners to 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 substantial progress with the implement of the plan. The plan 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;
        - Other factors as determined by the applicant to be pertinent; and
        - Documents showing which patients were accepted from hospital waiting lists and which are still on the waiting lists. [RNR]

    The DOH reserves the right to require continued reporting beyond the two year period.

6. Submission and acceptable programmatic review of a new name which is more descriptive of a nursing home. [LTC]
7. Submission and programmatic review and approval of the final floor plans, including layouts showing the placement of furniture, equipment and storage for all types of resident rooms. [LTC]
8. Submission of a commitment that is acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest. Included with

the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]

9. Submission of an executed working capital loan agreement that is acceptable to the Department. [BFA]
10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
11. Submission of a photocopy of an executed operating lease agreement between White Plains Healthcare Properties I, LLC and the applicant, which is acceptable to the Department. [BFA, CSL]
12. Submission of a photocopy of the Articles of Organization of HBL SNF, LLC, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of a Certificate of Amendment of the Articles of Organization of HBL SNF, LLC which is acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed Operating Agreement of HBL SNF, LLC, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the bylaws of Hebrew Hospital Home of Westchester and Bethel Nursing Home Company. [CSL]
16. Submission of a list providing the name of each member, membership interest, and percentage ownership interest in Westchester Health Care Properties I, LLC. [CSL]
17. Submission of a list of all managers of Westchester Health Care Properties I, LLC. [CSL]
18. Submission of a photocopy of the Articles of Organization and any amendments thereto, and the Operating Agreement of Westchester Health Care Properties I, LLC, which is acceptable to the Department. [CSL]
19. Submission of a photocopy of a Development Agreement between HBL SNF, LLC and White Plains Healthcare Properties I, LLC, which is acceptable to the Department. [CSL]

<u>APPROVAL CONDITIONAL UPON:</u>

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 April 1, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
3. Annual reporting of the number of admissions of "hard to place" patients and of any and all hospital waiting lists for such patients in Westchester County. [RNR]

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 # 121427-E

## JOPAL Sayville, LLC
## d/b/a Petite Fleur Nursing Facility

***County:*** **Suffolk (Sayville)**
***Purpose:*** **Establishment**

***Program:*** **Residential Health Care Facility**
***Submitted:*** **June 7, 2012**

## Executive Summary

### Description

JOPAL Sayville, LLC, requests approval to be established as the new operator of Petite Fleur Nursing Home, an existing 180-bed proprietary residential health care facility (RHCF) located at 300 Broadway Avenue, Sayville. The proposed change in ownership of the operation and the real estate is as follows:

**Operation**

*Current Owner*
Petite Fleur Nursing Home

MEMBERS:
-- Theresa M Santmann (52.00%)
-- Theresa A Santmann (35.00%)
-- John Santmann (13.00%)

*Proposed Owner*
JOPAL Sayville, LLC

MEMBERS:
-- Joseph Carillo II (33.33%)
-- Pasquale DeBenedictis (33.34%)
-- Alex Solovey (33.33%)

**Real Property**

*Current Owner*
Petite Fleur Nursing Home

MEMBERS:
-- Theresa M Santmann (52.00%)
-- Theresa A Santmann (35.00%)
-- John Santmann (13.00%)

*Proposed Owner*
Petite Fleur Acquisition, LLC

MEMBERS:
-- Joseph Carillo II (33.33%)
-- Pasquale DeBenedictis (33.34%)
-- Alex Solovey (33.33%)

The acquisition of the operating interests by JOPAL Sayville, LLC is for $11,750,000, and the realty interests by Petite Fleur Acquisition, LLC for $11,750,000.

### DOH Recommendation

Contingent approval.

### Need Summary

Petite Fleur Nursing Home occupancy for 2008 through 2010 was 96.3%, 97.4% and 96.0%, respectively. The facility was significantly above the 75% regional planning average for Medicaid admissions in 2009 and 2010.

### 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

The purchase price will be met via equity of $2,500,000 from the proposed members and a bank loan of $21,000,000 for the operation and the real estate (30 yrs. @ 2.75%).

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 18,516,900* |
| | *Expenses:* | *18,348,029* |
| | *Gain/(Loss):* | *$ 168,871* |

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 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. The Department reserves the right to require continued reporting beyond the two year period. [RNR]
2. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of a loan commitment for the operating portion that is acceptable to the Department. [BFA]
4. Submission of a loan commitment for the real estate portion that is acceptable to the Department. [BFA]
5. Submission of a photocopy of a fully executed asset purchase agreement between Jopal Sayville, LLC and Petite Fleur Nursing Home that is acceptable to the Department. [BFA, CSL]
6. Submission of a photocopy of the fully executed real estate purchase agreement between Petite Fleur Acquisition, LLC and Petite Fleur Nursing Home that is acceptable to the Department. [BFA, CSL]
7. Submission of a photocopy of the fully executed lease between Petite Fleur Acquisition, LLC and Jopal Sayville, LLC that is acceptable to the Department. [BFA, CSL]
8. Submission of a photocopy of the signed and dated Certificate of Assumed Name of Jopal Sayville, LLC, indicating its intent to do business as Petite Fleur Nursing Facility, acceptable to the Department. [CSL]
9. Submission of a photocopy of the signed and dated Operating Agreement of Jopal Sayville, acceptable to the Department. [CSL]
10. Submission of a photocopy of the filed Articles of Organization of Jopal Sayville, acceptable to the Department. [CSL]
11. Submission of a photocopy of the signed and dated Certificate of Amendment of the Articles of Organization of Jopal Sayville, LLC acceptable to the Department. [CSL]

Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

JOPAL Sayville, LLC has entered into an Asset and Real Estate Purchase Agreement with Petite Fleur Nursing Home, a 180-bed proprietary residential health care facility (RHCF) located at 300 Broadway Avenue, Sayville, 11782, in Suffolk County. The facility is seeking approval to acquire Petite Fleur Nursing Home and to change the name to JOPAL Sayville.

Petite Fleur Nursing Home's occupancy of 97.4% in 2009 exceeded the planning optimum of 97%. Occupancy for 2008 and 2010 was slightly lower at 96.3% and 96%, respectively. Petite Fleur Nursing Home exceeded the Long Island and Suffolk County planning area utilization for all years in question, as indicated in the table below.

| *RHCF Occupancy* | *2008* | *2009* | *2010* |
|---|---|---|---|
| Petite Fleur Nursing Home | 96.3% | 97.4% | 96.0% |
| Suffolk County | 94.8% | 95.4% | 94.3% |
| Long Island Region | 95.0% | 94.8% | 93.4% |

The 2016 Projected Bed Need for the Long Island Region is 1,353. The region's occupancy must exceed 97% for there to be a presumption of need.

| *RHCF Bed Need* | *Long Island* |
|---|---|
| 2016 Projected need | 16,962 |
| Current Beds | 16,000 |
| Beds under Construction | - 391 |
| Total Resources | 15609 |
| Unmet Need | 1353 |

## Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Petite Fleur Nursing Home exceeded the 75 percent planning average for 2009 and 2010 with reported Medicaid admissions of 49.03 percent in 2009 and 30.42 percent in 2010. The 75 percent planning averages for Suffolk for 2009 and 2010 were 17.32 percent and 8.95 percent, respectively.

## Recommendation

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

# Programmatic Analysis

## Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | Petite Fleur Nursing Home | Same |
| *Address* | 300 Broadway Avenue<br>Sayville, NY. 11782 | Same |
| *RHCF Capacity* | 180 | Same |
| *ADHC Program Capacity* | N/A | N/A |
| *Type of Operator* | Partnership | LLC |
| *Class of Operator* | Proprietary | Proprietary |
| *Operator* | Petite Fleur Nursing Home<br><br>Members:<br>Thomas M Santmann 52%<br>Theresa A Santmann 35%<br>John Santmann 13% | JOPAL Sayville, LLC<br><br>Members:<br>Pasquale DeBenedictis 33.34%<br>Joseph Carillo II 33.33%<br>Alexander Solovey 33.33% |

## Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

| | |
|---|---|
| Barnwell Nursing and Rehabilitation Center | 11/2003 to present |
| East Neck Nursing and Rehabilitation Center | 02/2005 to present |
| Mills Pond Nursing and Rehabilitation Center | 10/2010 to present |
| Carillon Nursing and Rehabilitation Center | 01/1999 to present |

- INDIVIDUAL BACKGROUND REVIEW:

**Pasquale DeBenedictis** is a certified public accountant (CPA] with license in good standing. He has disclosed ownership interest in the following residential health care facilities:

| | |
|---|---|
| Barnwell Nursing and Rehabilitation Center | 11/2003 to present |
| East Neck Nursing and Rehabilitation Center | 02/2005 to present |
| Mills Pond Nursing and Rehabilitation Center | 10/2010 to present |

**Alexander Solovey** is a New York State licensed physical therapist, in good standing. He discloses ownership interest in the following residential health care facilities:

| | |
|---|---|
| Barnwell Nursing and Rehabilitation Center | 11/2003 to present |
| East Neck Nursing and Rehabilitation Center | 02/2005 to present |
| Mills Pond Nursing and Rehabilitation Center | 10/2010 to present |

**Joseph Carillo II** holds a New York State Nursing Home Administrator's License, for which he is currently registered and in good standing. He has disclosed ownership interest in the following residential health care facilities:

| | |
|---|---|
| Carillon Nursing and Rehabilitation Center | 01/1999 to present |
| Barnwell Nursing and Rehabilitation Center | 10/2006 to present |
| East Neck Nursing and Rehabilitation Center | 02/2006 to present |
| Mills Pond Nursing and Rehabilitation Center | 10/2010 to present |

***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 Barnwell Nursing and Rehabilitation Center, East Neck Nursing and Rehabilitation Center, Mills Pond Nursing & Rehabilitation Center, and Carillon Nursing & Rehabilitation Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

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

## Financial Analysis

Asset Purchase Agreement
The change in operational ownership will be effectuated in accordance with a draft asset purchase agreement, the terms of which are summarized below:

| | |
|---|---|
| *Date:* | June 2012 |
| *Seller:* | Petite Fleur Nursing Home |
| *Buyer:* | JOPAL Sayville, LLC |
| *Assets Transferred:* | The nursing home, including the right to use the name "Petite Fleur Nursing Home" and any and all other trade names, inventory and supplies, the Account Receivable of the Nursing Home; all leasehold improvements and equipment to the extent assignable, all licenses and permits; prepaid expenses with regard to the Assets; trust funds belonging to the residents and held by the nursing home; and any all pre-payments for room and service charges. |
| *Excluded Assets:* | The land located at the address commonly known as 380 Broadway Avenue, Sayville, New York together with all buildings and improvements, easements, private roads and streets and fixtures and plumbing, heating, electrical, sewage and HVAC systems; and any an all cash and cash equivalents, HUD or bank reserves, bank accounts and other deposits and stocks and bonds; any and all instruments, prepaid assets and deposits; the operating certificate issued to the Seller by DOH of which is required to operate the nursing home; other than the Operating Records, and any all tax and financial accounting records of the Seller, minute books and other corporate records of the Seller, the Seller's corporate seal; the insurance policies and any pending claims; all personal property owned or used by Theresa A Santmann in her office of the nursing home; books and records related to the organization, maintenance and existence of the Seller and any rights and interests of the Seller in or to the Excluded Accounts or the Written Off Accounts. |
| *Assumed Liabilities:* | All liabilities of the Seller arising from or relating to Assets, the operations or business of the Nursing Home on or after the Closing Date; those commitments, contracts, leases and agreements outstanding in respect of the Assets and the operation of the Nursing Home, including, but not limited to the Nursing Home's Medicare and Medicaid Provider Agreements; the Accounts Payable that are outstanding as of the Closing Date; any and all obligations of the Seller pursuant to the collective bargaining agreement and any and all obligations of the Seller to contribute to the 1199 SEIU United Healthcare Workers East and 1199 SEIU Healthcare Employees Pension Funds. |
| *Purchase Price:* | $11,750,000 plus the assumption of the Assumed Liabilities. |
| *Payment of Purchase Price:* | $600,000 by a payment made to the order of the Escrow Agent, payable upon execution of this Agreement. The balance of the purchase price shall be paid by the Buyer to the Seller at the Closing. |

The operational purchase price will be met as follows:

| | |
|---|---|
| Bank Loan (2.75% interest rate for a 30 year term) | $9,250,000 |
| Equity | 2,500,000 |

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility does not have any outstanding liabilities.

## Real Estate Purchase Agreement

The applicant has submitted a draft real estate purchase agreement for the nursing home site, summarized below:

| | |
|---|---|
| *Premises:* | The site located at 300 Broadway Avenue, Sayville, New York where Petite Fleur Nursing Home is located. |
| *Seller:* | Petite Fleur Nursing Home |
| *Purchaser:* | Petite Fleur Acquisition, LLC |
| *Purchase Price:* | $11,750,000 |
| *Payment of Purchase Price:* | Payable at Closing |

The real estate purchase price will be payable as follows:

| | |
|---|---|
| Bank Loan (2.75% for a 30 year term) | $11,750,000 |

## Lease Rental Agreement

The applicant has submitted a draft lease for the site that they will occupy after the change in ownership; which is summarized below:

| | |
|---|---|
| *Lessor:* | Petite Fleur Acquisition, LLC |
| *Lessee:* | JOPAL Sayville, LLC |
| *Term:* | 45 years |
| *Rental:* | The annual rental payment is $1,401,309.80. |
| *Provisions:* | The lessee shall be responsible for utilities, maintenance and real estate taxes. |

The facility is encumbered by a mortgage, with an original principal of $13,089,973, payable over 35 years and 6 months. The mortgage balance of July 1, 2012 will be approximately $11,368,117. The mortgage will mature in 2033. Currently, Medicaid capital reimbursement is based on interest, amortization, and return on and return of equity methodology. After the change in ownership, reimbursement will be based on return of and return on equity reimbursement methodology.

## Operating Budget

The applicant has submitted an operating budget, in 2012 dollars, for the first year subsequent to the change in operator, summarized as follows:

| | Per Diem | Total |
|---|---|---|
| Revenues: | | |
| Medicaid FFS | $245.03 | $12,249,600 |
| Medicare FFS | 582.54 | 4,624,800 |
| Commercial | 358.06 | 44,400 |
| Private Pay | 390.35 | 1,549,700 |
| Other | | 48,400 |
| Total Revenues | | $18,516,900 |

| | | |
|---|---|---|
| Expenses: | | |
| Operating | $262.91 | $16,307,334 |
| Capital | 32.90 | 2,040,695 |
| Total Expenses | $295.81 | $18,348,029 |
| | | |
| Net Income | | $168,871 |
| | | |
| Utilization: (patient days) | | 62,026 |
| Occupancy | | 94.40% |

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

- Medicaid capital reimbursement will be based on return of and return on equity reimbursement methodology after the change in ownership.
- Budgeted case mix of 1.0580 is consistent with the facility's experience.
- Medicare, Private Pay and other revenues assume current payment rates.
- Occupancy is projected at 94.40% during the first year subsequent to the change in operator. Projected occupancy is consistent with historical experience.
- Utilization, broken down by payor source, during the first year subsequent to the change in operator, is as follows:

| | |
|---|---|
| Medicaid FFS | 80.60% |
| Medicare FFS | 12.80% |
| Commercial | .20% |
| Private Pay | 6.40% |

## Capability And Feasibility

The purchase price for the realty interests is $11,750,000 and the purchase price for the operational interests is $11,750,000. The purchase price for these interests will be met as follows: Equity of $2,500,000 from the proposed members and a bank financing of $21,000,000 for the operation and the real estate portion at an interest rate of 2.75% for a 30 year term.

Working capital requirement is estimated at $3,058,004, which appears reasonable based on two months of first year expenses subsequent to the change in operator. The applicant will finance $1,500,000 via a bank loan at an interest rate of 5% for a five year term. The remainder, $1,558,004, will be provided via equity from the members personal resources. Presented as BFA Attachment A are the personal net worth statements of the proposed members of JOPAL Sayville, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and the equity towards the operation and the real estate purchase.

Presented as BFA Attachment C, is the pro-forma balance sheet of the operating entity, JOPAL Sayville, LLC, indicating a positive $58,004 equity position as of the first day of operation subsequent to the change in operator. Presented as BFA Attachment D, is the pro-forma balance sheet of the real estate entity, Petite Fleur Acquisition, LLC, which indicates a $0 equity position as of the first day subsequent to the change in operator.

The submitted budget indicates a net income of $168,871 during the first year subsequent to the change in operator. Following is a comparison of historical and projected revenue and expense:

| | |
|---|---|
| 2011 Historical Income | $19,879,145 |
| 2011 Historical Expense | 17,598,183 |
| 2011 Historical Net Income | $ 2,280,962 |
| Incremental Income | ($1,362,245) |

| | |
|---|---|
| Incremental Expense | 749,846 |
| Incremental Net Income | ($2,112,091) |
| | |
| Projected Net Income | $ 168,871 |

Incremental income is the result of the decrease of Medicaid revenues by approximately $2,900,000 because of the one-time retro-active adjustments in 2011. Also, incremental income will increase due to Medicare utilization increasing by 2.06%. Incremental expenses include acquisition of capital expenses and lease rental payments.

Presented as BFA Attachment B, is the financial summary of Petite Fleur Nursing Home during the period 2009 through 2011. As shown on Attachment B, the facility had an average positive working capital position and an average negative net asset position. The average negative net asset position is the result of 2010 losses. The facility incurred a loss of $292,228 in 2010 due to two factors: Medicaid rates had not been approved by the CMS for payment by NYSDOH; and, excessive overtime pay for nursing staff. Cost saving initiatives included a reduction in facility contribution to employee health insurance premiums; and restrictions on overtime. The facility achieved an average net income of $759,781 during the period 2009 through 2011 due to a positive Medicaid retroactive rate adjustment resulting in a net income of $2,280,962 in 2011.

Presented as BFA Attachment E, is the financial summary of Carillon Nursing Home and Rehabilitation Center during the period 2009 through 2011. As shown on Attachment E, the facility had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of $691,492.

Presented as BFA Attachment F, is the financial summary of East Neck Nursing and Rehabilitation Center during the period 2009 through 2011. As shown on Attachment F, the facility had an average positive working capital position and an average positive net position. Also, the facility achieved an average net income of $875,938 from 2009 through 2011.

Presented as BFA Attachment G, is the financial summary of Mills Pond Nursing and Rehabilitation during the period 2009 through 2011. As shown on Attachment G, the facility had an average positive working capital and an average positive net asset position.
Also, the facility achieved an average net income of $669,044 from 2010 through 2011.

Presented as BFA Attachment H, is the financial summary of Barnwell Nursing and Rehabilitation Center during the period 2009 through 2011. As shown on Attachment H, the facility had an average negative working capital position and an average positive net asset position during the period 2009 through 2011. Also, the facility achieved an average net income of $357,644 during the period 2009 through 2011.

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

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Personal Net Worth Statement for Proposed Members |
| BFA Attachment B | Financial Summary |
| BFA Attachment C | Pro Forma Balance Sheet (Operation) |
| BFA Attachment D | Pro Forma Balance Sheet (Real Estate) |
| BFA Attachment E | Financial Summary Carillon Nursing Home and Rehabilitation |

| | |
|---|---|
| BFA Attachment F | Financial Summary East Neck Nursing Home and Rehabilitation Center |
| BFA Attachment G | Financial Summary Mills Pond Nursing and Rehabilitation |
| BFA Attachment H | Financial Summary Barnwell Nursing and Rehabilitation Center |
| 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 11th day of October, 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 JOPAL Sayville, LLC as the new operator of Petite Flour Nursing Facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY/APPLICANT: |
|---|---|
| 121427 E | JOPAL Sayville, LLC d/b/a Petite Fleur Nursing Facility |

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. The Department reserves the right to require continued reporting beyond the two year period. [RNR]
2. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of a loan commitment for the operating portion that is acceptable to the Department. [BFA]
4. Submission of a loan commitment for the real estate portion that is acceptable to the Department. [BFA]
5. Submission of a photocopy of a fully executed asset purchase agreement between Jopal Sayville, LLC and Petite Fleur Nursing Home that is acceptable to the Department. [BFA, CSL]
6. Submission of a photocopy of the fully executed real estate purchase agreement between Petite Fleur Acquisition, LLC and Petite Fleur Nursing Home that is acceptable to the Department. [BFA, CSL]
7. Submission of a photocopy of the fully executed lease between Petite Fleur Acquisition, LLC and Jopal Sayville, LLC that is acceptable to the Department. [BFA, CSL]
8. Submission of a photocopy of the signed and dated Certificate of Assumed Name of Jopal Sayville, LLC, indicating its intent to do business as Petite Fleur Nursing Facility, acceptable to the Department. [CSL]
9. Submission of a photocopy of the signed and dated Operating Agreement of Jopal Sayville, acceptable to the Department. [CSL]
10. Submission of a photocopy of the filed Articles of Organization of Jopal Sayville, acceptable to the Department. [CSL]
11. Submission of a photocopy of the signed and dated Certificate of Amendment of the Articles of Organization of Jopal Sayville, 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 # 121407-E

## 150 Riverside OP, LLC d/b/a The Riverside

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

***Program:*** **Residential Health Care Facility**
***Submitted:*** **May 29, 2012**

## Executive Summary

### Description

150 Riverside OP, LLC d/b/a The Riverside, is seeking approval to become the new operator of Kateri Residence, an existing 520-bed, not-for-profit residential health care facility (RHCF) located at 150 Riverside Drive, in Manhattan. Catholic Health Care System is currently the sole member of Kateri Residence. 150 Riverside OP, LLC's ownership is as follows:

| *Proposed Operator* | *Membership and Interest* |
|---|---|
| 150 RSD Ventures LLC (59%) | - Shanon Penson (100.00%) |
| 150 Riverside Management Group, LLC (21%) | - Sharon Einhorn (45.24%)<br>Devorah Friedman (45.24%)<br>Yossie Zucker (9.52%) |
| DJ River OP, LLC (19%) | - Jay Eisenstadt (50.00%)<br>Helene Scharf (50.00%) |
| AS River OP, LLC (1%) | Ann Schon |

The realty is being purchased by 150 Riverside, LLC, which is owned by the following:

| *150 Riverside, LLC* | *Membership and Interest* |
|---|---|
| 150 RSD Property Ventures LLC (59%) | - Andrew Penson (100.00%) |
| 150 Riverside MN Property LLC (21%) | - Mark Friedman (45.24%)<br>Neal Einhorn (45.24%)<br>Yossie Zucker (9.52%) |
| DJ River Prop, LLC (19%) | - Jay Eisenstadt (50.00%)<br>David Scharf (50.00%) |
| Ann Schon (1%) | |

No changes in the program or physical environment are proposed in this application.

### DOH Recommendation

Contingent approval.

### Need Summary

Kateri Residence's occupancy exceeded the 97% planning optimum from 2008 to 2010, with rates of 98.1%, 97.9%, and 98.3%, respectively. The facility also reported Medicaid admissions of 24.5%and 16.7% in 2008 and 2009, respectively, both above the 75% planning averages for New York County during those years.

### Program Summary

No negative information has been received concerning the character and competence of the above applicants identified as new members.

### Financial Summary

The purchase price for the operating assets is $14,000,000 and the real property is $66,000,000, totaling $80,000,000 plus a maximum cost of $1,350,000 for the sprinkler system based on invoice. The sprinkler system will be funded through equity. The purchase price will be paid by $16,000,000 in cash
and a $64,000,000 mortgage at 5.26% over a 10-year term with a 30 year amortization.

There are no project costs associated with this proposal.

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 64,143,494* |
| | *Expenses:* | *61,287,873* |
| | *Gain/(Loss):* | *$ 2,855,621* |

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 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. The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a commitment acceptable to the Department of Health, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning of approval of final plans and specifications and before the start of construction. Included in the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Confirmation regarding the name of the facility. [CSL]
6. Submission of a photocopy of an executed Certificate of Assumed Name for 150 Riverside Op., LLC acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed proposed Certificate of Amendment to the Certificate of Formation of 150 Riverside Op., LLC acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Application of Authority of 150 Riverside Op., LLC acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Operating Agreement of 150 Riverside Op., LLC acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed proposed Certificate of Amendment to the Certificate of Formation of 150 RSD Ventures, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed proposed Certificate of Amendment to the Certificate of Formation of DJ River Op., LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed Application of Authority of DJ River Op., LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed proposed Certificate of Amendment to the Articles of Incorporation of 150 Riverside Management Group, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the executed Limited Liability Company Agreement of AS River Op., LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of the executed Limited Liability Company Agreement of DJ River Op., LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the executed Limited Liability Company Agreement of 150 Riverside Management Group, LLC, acceptable to the Department. [CSL]
17. Submission of a list providing the name, membership interest and percentage ownership interest in the 2nd Level member and indirect ownership percentage in the Article 28 LLC.
18. Submission of photocopies of Exhibits A and C to the Purchase and Sale agreement.
19. Submission of a photocopy of an executed Certificate of Amendment or Certificate of Dissolution of Kateri Residence, Inc., acceptable to the Department. [CSL]
20. Submission of a photocopy of the executed Lease Agreement of 150 Riverside Op., LLC acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The transaction provides payment to the Seller for long term care real estate and operations. The Seller has represented and confirmed to the Department that a majority of the sale proceeds will be reinvested into the development of a PACE program and other long term care programs that add capacity in the region. This sale and project approval are conditioned upon the Seller adhering to those commitments. [BFA]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Kateri Residence, a 520 bed voluntary not-for-profit facility located at 150 Riverside Drive, 10024, in New York County seeks approval to enter into an asset purchase and sale agreement with 150 Riverside OP. LLC d\b\a The Riverside (The Center).

Kateri Residence exceeded the planning optimum of 97% for 2008, 2009, and 2010. In addition Kateri exceeded New York County and the NYC Region utilization for all years in question.

| *RHCF Occupancy* | *2008* | *2009* | *2010* |
|---|---|---|---|
| Kateri Residence New York | 98.1% | 97.9% | 98.3% |
| New York County | 96.9% | 96.7% | 96.5% |
| NYC Region | 94.5% | 95.0% | 94.8% |

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

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission polices and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Kateri Residence was above the 75 percent planning average for 2008 and 2009. The facility reported Medicaid admissions of 24.5 percent and 16.7 percent in 2008 and 2009, respectively. The 75 percent planning averages for New York County were 21.9 percent in 2008 and 11.7 percent 2009.

Kateri Residence has exceeded the planning optimum for occupancy and the Medicaid Access admissions standard.

## Recommendation

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

# Programmatic Analysis

## Facility Information

| | *Existing* | *Proposed* |
|---|---|---|
| *Facility Name* | Kateri Residence | The Riverside |
| *Address* | 150 Riverside Drive | Same |
| *RHCF Capacity* | 520 | Same |
| *ADHC Program Capacity* | N/A | N/A |
| *Type of Operator* | Corporation | LLC |
| *Class of Operator* | Voluntary not-for-profit | Proprietary |
| *Operator* | Kateri Residence | 150 Riverside Op. LLC<br><br>**2nd Level LLCs**<br><br>150 RSD Ventures LLC 59.00%<br>150 Riverside Management Group LLC 21.00%<br>DJ River Op LLC 19.00%<br>AS River Op LLC 1.00%<br><br>MEMBERS:<br><br>150 RSD Ventures LLC<br>Shannon Penson 100.00%<br><br>150 Riverside Management Group LLC*<br>Sharon Einhorn<br>Devorah Friedman 45.24%*<br>Yossie Zucker 45.24%*<br>9.52%<br><br>DJ River Op LLC<br>Jay Eisenstadt<br>Helene Scharf 50.00%<br>50.00%<br><br>AS River Op LLC<br>Ann Schon<br>100.00%<br><br>** Managing member* |

## Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities
Bellhaven Center for Rehabilitation and Nursing Care 03/2010 to present

| | |
|---|---|
| Dumont Center for Rehabilitation and Nursing Care | 08/2010 to present |
| New Vanderbilt Rehabilitation and Care Center | 01/2010 to present |
| Sans Souci Rehabilitation and Nursing Center | 10/2009 to present |

Out-of-State Residential Health Care Facilities

| | |
|---|---|
| Forbes Center for Rehabilitation and Healthcare | 10/2011 to present |

- INDIVIDUAL BACKGROUND REVIEW:

**Shannon Penson** has been a homemaker and has not been employed for the past 10 years. She discloses no ownership interest in health facilities.

**Sharon Einhorn** discloses employment history for the last 10 years. She has disclosed ownership interest in the following residential health care facilities:

| | |
|---|---|
| Bellhaven Center for Rehabilitation and Nursing Center | 03/2010 to present |
| Dumont Center for Rehabilitation and Nursing Care | 08/2010 to present |

**Devorah Friedman** is NYS licensed speech language pathologist, license number 017276 and is in good standing. She has disclosed ownership interest in the following residential health care facilities:

| | |
|---|---|
| Bellhaven Center for Rehabilitation and Nursing Center | 03/2010 to present |
| Dumont Center for Rehabilitation and Nursing Care | 08/2010 to present |
| Sans Souci Rehabilitation and Nursing Center | 10/2009 to present |

**Yossie Zucker** is a certified public accountant (CPA), license number 094870-1 and is in good standing. He discloses no ownership interest in health facilities.

**Jay Eisenstadt** is the president and partner of Esplanade Capital LLC, a real estate investment firm. He discloses ownership interest in the following out-of-state residential health care facility:

| | |
|---|---|
| Forbes Center for Rehabilitation and Healthcare | 10/2011 to present |

**Helene Scharf** is a NYS licensed speech language pathologist, license number 012601 and is in good standing. She discloses no ownership interest in health facilities.

**Ann Schon** is a bookkeeper at the New Vanderbilt Rehabilitation and Care Center. She discloses ownership interest in the following residential health care facility:

| | |
|---|---|
| New Vanderbilt Rehabilitation and Care Center | 01/2010 to present |

***Character and Competence – Analysis:***

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of Bellhaven Center for Rehabilitation and Nursing Care, Dumont Center for Rehabilitation and Nursing Care, and the New Vanderbilt Rehabilitation and Care Center reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

A review of operations for San Souci Nursing Home for the period reveals the following:

- The facility was fined $10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of information provided by the Pennsylvania Department of Health for the Forbes Center for Rehabilitation and Healthcare located in Pittsburgh, Pennsylvania for the period identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

No changes in the program or physical environment are proposed in this application.

### Recommendation

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

## Financial Analysis

### Asset Purchase and Sale Agreement

The change in ownership and real property will be effectuated in accordance with an executed asset purchase and sale agreement, the terms of which are summarized below:

| | |
|---|---|
| *Date:* | March 27, 2012 |
| *Seller:* | Kateri Residence |
| *Purchaser of Operating Assets:* | 150 Riverside OP, LLC |
| *Buyer of Real Property Assets:* | 150 Riverside, LLC |
| *Purchased Assets:* | The real estate and all assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents; |
| *Excluded Assets:* | Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents. |
| *Purchase Price:* | $14,000,000 for the operating interest and $66,000,000 for the real property interest totaling $80,000,000 plus the cost of the new sprinkler system up to a maximum amount of $1,350,000. |
| *Payment of Purchase Price:* | A total deposit of $5,000,000 paid to the trustee to be held in escrow with the remaining $75,000,000 to be paid at closing. The sprinkler system will be paid prior to 5 days of closing based on invoice. |

### Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

| | |
|---|---|
| *Premises:* | An 520 bed RHCF located at 150 Riverside Drive, New York |
| *Lessor:* | 150 Riverside, LLC |
| *Lessee:* | 150 Riverside OP, LLC |
| *Terms:* | 10 years commencing on the execution of the lease |
| *Rental:* | $5,129,090 per year ($427,424 per month) |
| *Provisions:* | Lessee is responsible for taxes, insurance, utilities and maintenance |

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

The applicant is entering into a ten year lease to allow the operator to decide whether to continue operating the facility at this site or to propose a new location, since the existing facility will be beyond its useful life and relocation maybe inevitable if the costs of operating a nursing home in New York County become financially prohibitive.

## Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2012 dollars, for the first year subsequent to change in ownership:

| | |
|---|---|
| Revenues: | |
| Medicaid | $41,069,550 |
| Medicare | 17,781,019 |
| Private Pay | 5,292,925 |
| Total Revenues | $64,143,494 |
| Expenses: | |
| Operating | $54,792,101 |
| Capital | 6,495,772 |
| Total Expenses | $61,287,873 |
| Net Income | $2,855,621 |
| Utilization: (patient days) | 187,464 |
| Occupancy | 98.77% |

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

- The capital component of the Medicaid rate is based on historical cost.
- Expenses include lease rental.
- Medicaid revenues include assessment revenues.
- Medicaid rates are based on actual 2011 rates with no trend to 2012.
- Overall utilization is projected at 98.77%, while utilization by payor source is expected as follows:

| | |
|---|---|
| Medicaid | 79.44% |
| Medicare | 15.81% |
| Private Pay | 4.75% |

- Breakeven occupancy is projected at 94.37%.

## Capability and Feasibility

The purchase price of $14,000,000 for the operations will be financed by the proposed members' equity. The purchase price of the real property will be financed by a loan from Capital One Bank of $64,000,000 at an interest rate of 5.26% for 10 years, with a 30 year amortization, with the remaining $2,000,000 from the members of 150 Riverside, LLC equity. Presented as BFA Attachment B, is the net worth statement of proposed members, which shows sufficient equity. A letter of interest has been submitted by Capital One bank.

The members of 150 Riverside LLC have submitted an affidavit stating that they will fund the balloon payment, should acceptable financing not be available at the time the loan comes due after the 10 year period. Presented as BFA Attachment E, is the interest and amortization schedule for the ten year term.

Working capital requirements are estimated at $10,214,646, based on two months of the first year expenses, which $5,107,323 will be satisfied from the proposed member's equity and the remaining $5,107,323 will be satisfied through a loan from Capital One Bank at 5.26% over 5 years. A letter of interest has been supplied by the bank. An affidavit from Shanon Penson, an applicant member, states that she is willing to contribute resources disproportionate to her

ownership percentages to cover necessary equity contributions. Presented as BFA Attachment B, is the Net Worth of proposed members, which shows sufficient equity.

The submitted budget indicates that a net income of $2,855,621 would be maintained during the first year following change in ownership. Presented as BFA Attachment C is the pro-forma balance sheet of 150 Riverside OP, LLC d/b/a The Riverside, which indicates positive members' equity of $19,107,323 as of the first day of operations.

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 D, the facility maintained positive working capital, net assets and a net income from operations in 2010-2011 and as of May 31, 2012.

BFA Attachments F-I, Financial Summaries of affiliated RHCFs shows all four facilities have experienced negative working capital and maintained positive equity and net income from operations for the periods shown. The reason for negative working capital is due to the recording of the category due to third party payors as a current liability.

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

Recommendation

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

## Attachments

| | |
|---|---|
| BFA Attachment A | Organizational Chart of proposed entities |
| BFA Attachment B | Net Worth of Proposed Members |
| BFA Attachment C | Pro-forma Balance Sheet, |
| BFA Attachment D | Financial Summary, Kateri residence |
| BFA Attachment E | Interest and Amortization Schedule |
| BFA Attachment F | Financial Summary, New Vanderbilt Rehabilitation & Care Center, Inc. |
| BFA Attachment G | Financial Summary, Sans Souci Rehabilitation & Care Center |
| BFA Attachment H | Financial Summary, Dumont Center for rehabilitation & Care |
| BFA Attachment I | Financial Summary, Bellhaven Center for Rehabilitation & Nursing Care |
| 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 11th day of October, 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 150 Riverside OP, LLC d/b/a The Riverside as the new operator of Kateri Residence, 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: |
|---|---|
| 121407 E | 150 Riverside OP, LLC d/b/a The Riverside |

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. The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
2. Submission of a loan commitment for working capital that is acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease agreement that is acceptable to the Department of Health. [BFA]
4. Submission of a commitment acceptable to the Department of Health, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning of approval of final plans and specifications and before the start of construction. Included in the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Confirmation regarding the name of the facility. [CSL]
6. Submission of a photocopy of an executed Certificate of Assumed Name for 150 Riverside Op., LLC acceptable to the Department. [CSL]
7. Submission of a photocopy of an executed proposed Certificate of Amendment to the Certificate of Formation of 150 Riverside Op., LLC acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed Application of Authority of 150 Riverside Op., LLC acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Operating Agreement of 150 Riverside Op., LLC acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed proposed Certificate of Amendment to the Certificate of Formation of 150 RSD Ventures, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed proposed Certificate of Amendment to the Certificate of Formation of DJ River Op., LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed Application of Authority of DJ River Op., LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed proposed Certificate of Amendment to the Articles of Incorporation of 150 Riverside Management Group, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the executed Limited Liability Company Agreement of AS River Op., LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of the executed Limited Liability Company Agreement of DJ River Op., LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the executed Limited Liability Company Agreement of 150 Riverside Management Group, LLC, acceptable to the Department. [CSL]
17. Submission of a list providing the name, membership interest and percentage ownership interest in the 2nd Level member and indirect ownership percentage in the Article 28 LLC.
18. Submission of photocopies of Exhibits A and C to the Purchase and Sale agreement.

19. Submission of a photocopy of an executed Certificate of Amendment or Certificate of Dissolution of Kateri Residence, Inc., acceptable to the Department. [CSL]
20. Submission of a photocopy of the executed Lease Agreement of 150 Riverside Op., LLC acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The transaction provides payment to the Seller for long term care real estate and operations. The Seller has represented and confirmed to the Department that a majority of the sale proceeds will be reinvested into the development of a PACE program and other long term care programs that add capacity in the region. This sale and project approval are conditioned upon the Seller adhering to those commitments. [BFA]

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 # 112306-E

## Hospitals Home Health Care, Inc.

***County:*** **Oswego (Fulton)**
***Purpose:*** **Establishment**

***Program:*** **Certified Home Health Agency**
***Submitted:*** **November 22, 2011**

## Executive Summary

### Description

This proposal seeks to de-establish Albert Lindley Lee Memorial Hospital (A.L. Lee) as a member corporation of Hospitals Home Health Care, Inc., a not-for-profit Article 36 certified home health agency (CHHA), leaving Oswego Health, Inc. as the sole remaining corporate member of Hospitals Home Health Care, Inc. (HHHC). This proposal also seeks PHHPC approval to file with the NYS Department of State a Certificate of Amendment to the Certificate of Incorporation to change the legal corporate name of Hospitals Home Health Care, Inc., to Oswego Health Home Care, Inc.

The applicant will continue to lease 2,400 square feet of space located at 113 Schuyler Street, Fulton for administrative offices and storage.

In 1991, A.L. Lee and Oswego Hospital became the sole members of HHHC, each possessing 50% membership. In 2009, A.L. Lee filed for bankruptcy and ceased all licensed health care operations.

Through an arrangement approved by the Department of Health, A.L. Lee's facilities were transferred to Oswego Hospital in 2010. As part of that transaction, A.L. Lee agreed to withdraw as a member of HHHC, subject to approval of the Department of Health. In the interim, A.L. Lee executed a voting agreement with Oswego Hospital, giving them authority to vote A.L. Lee's membership interests in HHHC. Oswego Hospital has obtained financial support from the Department of Health through a HEAL-NY grant to develop an extension clinic at the site of the former A.L. Memorial Hospital buildings to ensure the continuation of healthcare needs for the residents of Oswego County and surrounding communities.

Oswego Health, Inc., a not-for-profit corporation, was established in 1997 to further promote and support the charitable purposes of several entities including Oswego Hospital and Seneca Hill Manor, Inc. Oswego Health, Inc. serves as the sole member of each of these entities.

### DOH Recommendation

Contingent approval.

### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the board members of Hospitals Home Health Care, Inc., and Oswego Health, 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

There are no project costs associated with this application.

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

# Recommendations

Health Systems Agency

The Central New York HSA recommends approval of this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission to the NYS Department of Health of a NYS Department of State filed, stamped, receipted, state-sealed, and dated copy of the Certificate of Amendment to the Certificate of Incorporation for Hospitals Home Health Care, Inc., to officially change its name to Oswego Health Home Care, Inc. [LTC]

Council Action Date

**October 11, 2012.**

# Programmatic Analysis

## Background

The current proposal seeks to de-establish Albert Lindley Lee Memorial Hospital as a member corporation of Hospitals Home Health Care, Inc., and to convert the remaining member of Hospitals Home Health Care, Inc., from Oswego Hospital to the hospital's member corporation Oswego Health, Inc. Accordingly, Oswego Health, Inc. would be the sole corporate member of Hospitals Home Health Care, Inc., and would also remain the sole corporate member of Oswego Hospital. This proposal also seeks PHHPC approval to file a Certificate of Amendment to the Certificate of Incorporation with the NYS Department of State to change the legal corporate name of Hospitals Home Health Care, Inc., to Oswego Health Home Care, Inc.

In addition to becoming the sole member corporation of Hospitals Home Health Care, Inc. (proposed Oswego Health Home Care, Inc.), Oswego Health, Inc. is the member sole corporation of Oswego Hospital, an Article 28 acute care hospital, which also formerly operated Home Aide Service for Oswego County, an Article 36 LHCSA that closed August 1, 2011. Oswego Health, Inc. is also the member corporation of Seneca Hill Manor, an Article 28 nursing home; and Springside at Seneca Hill, an independent retirement community. All of the above facilities in the Oswego Health, Inc. corporate structure are listed as affiliations for each board member named below.

The governing bodies of both Hospitals Home Health Care, Inc. (proposed Oswego Health Home Care, Inc.), and Oswego Health, Inc., consist of the following board members:

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| **Thomas Schneider** (Chairperson)<br>President and CEO, Pathfinder Bank | **Chris Burritt** (Vice-Chairperson)<br>Owner, Burritt Motors (Auto Dealership) |
| **John FitzGibbons** (Treasurer)<br>Owner, FitzGibbons Agency (Insurance) and FitzGibbons Real Estate (Real Estate) | **Mary McGowan, Esq.** (Secretary)<br>Attorney, Reynolds and McGowan, PLLC (Law Firm)<br>Adjunct Professor, SUNY Oswego |
| **Barbara J. Bateman**<br>Senior VP, Alliance Bank | **Pamela Caraccioli**<br>Business Manager, Caraccioli and Associates, PLLC (Law Firm)<br>Adjunct Professor, SUNY Oswego |
| **William Clark**<br>Owner, The Great Outdoors (Recreational Vehicle Sales)<br>Additional Affiliations: Albert Lindley Lee Memorial Hospital, including Phoenix Primary Care Center D&TC, and Hannibal Primary Care Center D&TC | **Peter K. Cullinan**<br>Emergency Plant Instructor, Manager, Specialist, and Human Performance Manager, Entergy Nuclear Northeast (Nuclear Energy Plant) |
| **Allison Duggan, MD**<br>Self-Employed Physician and General Surgeon<br>VP Medical Affairs, Oswego Hospital | **Adam C. Gagas**<br>Principal, Breakwall Asset Management, LLC (Investment Advisors)<br>Principal, Gagas Realty, Inc. (Commercial Real Estate) |
| W**illiam Galloway**<br>Real Estate Broker, Century 21 Galloway Realty (Real Estate) | **Ann C. Gilpin**<br>President and CEO, Oswego Health, Inc.<br>Additional Affiliation: Jones Memorial Hospital, Wellsville, NY |
| **Bernie Henderson**<br>Retired | **Ellen Holst, RN**<br>Health and Nutrition Administrator, Oswego County<br>Opportunities, Inc. (Community Action agency) |

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| | Additional Affiliations: Oswego County Department of Health (CHHA, LTHHCP, Hospice, D&TC) |
| **Paul Kurtzman**<br>Executive Director, Oswego Industries, Inc. (Community Rehabilitation Services) | **David Vickery**<br>Vice President, Leon Vickery, Inc. (Insurance Agency) |
| **Renato Mandanas, MD**<br>Self-Employed Physician<br>Owner, Renato Mandanas, MD, PLLC, d/b/a Primecare Medical Practice<br>Director, Pulmonary Function and Respiratory Therapy Departments, Oswego Hospital<br>VP Medical Affairs and Sole Shareholder, Ontario Medical Practice, PC | **Joseph E. Mather, MD**<br>Physician, Oswego County OB/GYN, PC |
| **Patricia Mears**<br>Corporate Secretary, Ernest Mears, DDS, PC (Dental Practice) | **Yvonne Petrella**<br>Dean of Extended Learning, SUNY Oswego |
| **Ricky D. Shaw, CPA**<br>Partner, Green and Seifter CPAs, PLLC (CPA Firm) | **Mark Slayton, CPA**<br>Director of Finance, Oswego College Foundation, SUNY Oswego |
| **James Tschudy**<br>Pastor, Congregational United Church of Christ<br>Chaplain, St. Luke Residential Health Care Facility<br>Adjunct Professor, SUNY Oswego | **Linda Tyrell**<br>Owner, Harbor Towne Gifts (Retail Gift Shop) |

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 all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Office of the Professions of the NYS Education Department, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, and NYS Department of State Occupational Licensing indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorney has submitted a Certificate of Good Standing.

The Division of Hospital Certification and Surveillance reviewed the compliance history of all affiliated hospitals, and diagnostic and treatment centers, for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied. It has been determined that the hospitals, and diagnostic and treatment centers, have provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of the affiliated nursing home for the time period 2002 to 2012. An enforcement action was taken against Seneca Hill Manor in 2002 based on an August, 2001 survey citing violations in Resident Assessment and Care Planning: Comprehensive Care Plans. The action was resolved with a $1000 civil penalty. It has been determined that the affiliated nursing home has provided a substantially consistent high level of care.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated certified home health agencies, long term home health care programs, licensed home care service agencies, and hospices for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied. An enforcement action was taken against Hospitals Home Health Care, Inc. in 2003 based on a May, 2002 survey, citing violations in

Policies and Procedures of Service Delivery; Patient Assessment and Plan of Care; and Governing Authority. The action was resolved with a $2500 civil penalty, $1250 of which was suspended. It has been determined that the certified home health agencies, long term home health care programs, licensed home care service agencies, and hospices have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Hospitals Home Health Care, Inc., and Oswego Health, 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, contingent approval is recommended.**

## Financial Analysis

### 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

There are no project costs associated with this application.

Presented as BFA Attachment B, a financial summary of Hospitals Home Health Care, Inc. indicates that the facility has maintained positive working capital, a positive net asset position, and experienced a net loss of $76,274 and $543,274 for 2010 and 2011 respectively. This represents 2.3% and 20% of the gross operating revenues respectively. The applicant has stated that the losses were due to the loss of several RN case managers through May of 2010, causing a decrease in admissions and the closure of Lee Memorial, causing recruitment of staff to become difficult. In July 2011, HHHC formed a steering committee and developed a Turnaround Action Plan, which has taken the following steps to improve operations:

- Target admissions of 115 were met in August 2011.
- As of September 15, 2011, all four vacant case manager positions were filled.
- Revenue was maximized by increasing case manager work load.
- Operating expenses were reduced by $23,000 a month.

Presented as BFA Attachment C, a financial summary of Oswego Health, Inc. and Affiliates indicates that the corporation has maintained positive working capital, a positive net asset position and experienced a net loss from operations of $5,431,132 and $3,350,045 for 2010 and 2011 respectively, which represents an average of 4% of gross operating revenues. The applicant has indicated that the loss from operations was due to Oswego Hospital, the largest component in the Oswego Health, Inc.'s consolidated statements, getting a significant reduction in their Medicaid rate, the loss of physicians, a major renovation project to the facility and the implementation of a new information system. The Hospital has been able to reduce costs and recruit new physicians, causing the loss from operations to be decreased to $15,571, which represents 0.03% of gross operating revenues, as of May 31, 2012.

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

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| BFA Attachment A | Organizational Chart, post approval |
| BFA Attachment B | Financial Summary, Hospitals Home Health Care, Inc. (2011 and 2010) |
| BFA Attachment C | Financial Summary, Oswego Health, Inc. and Affiliates (2010 and 2009) |
| BFA Attachment D | Internal Financial Summary as of February 29, 2012, Hospitals Home Health Care. |
| BFA Attachment E | Internal Financial Summary as of May 31, 2012, Oswego Health Inc. and Affiliates |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 11th day of October, 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 de-establish Albert Lindley Lee Memorial as a member of Hospitals Home Health Care, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that 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 |
|---|---|
| 112306 E | Hospitals Home Health Care, Inc. |

APPROVAL CONTINGENT UPON:

1. Submission to the NYS Department of Health of a NYS Department of State filed, stamped, receipted, state-sealed, and dated copy of the Certificate of Amendment to the Certificate of Incorporation for Hospitals Home Health Care, Inc., to officially change its name to Oswego Health Home Care, Inc. [LTC]

APPROVAL CONDITIONED UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

# Public Health and Health Planning Council

## Project # 121358-E

## Catholic Health Care System d/b/a Archcare

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

***Program:*** **Certified Home Health Agency**
***Submitted:*** **May 1, 2012**

## Executive Summary

### Description

Catholic Health Care System (CHCS) d/b/a Archcare, an existing not-for-profit corporation, requests approval to become the sole corporate member of Empire State Home Care Services (Empire), and Visiting Nurse Association of Brooklyn, Inc. (VNA of Brooklyn), both located at 15 Metrotech Center, 10th floor, Brooklyn. Each operates an Article 36 certified home health agency (CHHA) and long-term home health care program (LTHHCP).

Empire provides CHHA services in the following six counties: Bronx, Kings, New York, Queens, Richmond and Westchester, and provides LTHHCP services in New York County with a program capacity of 200. VNA of Brooklyn provides CHHA services in Kings County, and LTHHCP services in Kings and Queens Counties with program capacity of 750. Visiting Nurse Regional Health Care System will no longer be the non-member parent of the two CHHAs.

There is no acquisition cost or purchase agreement involved in the transition of Catholic Health Care System as the sole corporate member. The sole corporate member arrangement is expected to:

- promote the sharing of clinical best practices and joint training opportunities;
- integrate and centralize administrative functions; produce cost savings and efficiencies through group purchasing;
- improve staff recruitment and retention;
- and enhance the System's marketing presence.

There will be no change in lease arrangements nor any programmatic changes.

### DOH Recommendation

Contingent approval.

### Need Summary

As this project involves only a change in the ownership of a CHHA, no Need recommendation is required.

### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the board members of Providence Health Services, Catholic Health Care System, d/b/a Archcare, Visiting Nurse Association of Brooklyn, Inc., and Empire State Home Care Services, 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

There are no project costs associated with this project and there will be no change in the daily operations.

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 completed, signed, and notarized Schedule 2As and Schedule 2Cs for Cardinal Timothy Dolan and Bishop Robert Brucato. [LTC]
2. Submission of Certificates of Good Standing for the following attorneys: Monsignor Gregory A. Mustaciuolo, Francis J. Serbaroli, John T. Dunlap, Rory Kelleher, and Kathryn K. Rooney. [LTC]
3. Submission of a photocopy of the executed Certificate of Incorporation of Empire State Home Care Services, Inc., and any amendments thereto, acceptable to the Department. [CSL]
4. Submission of a photocopy of the adopted Amended and Restated Bylaws of Empire State Home Care Services, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Certificate of Incorporation of Visiting Nurse Association of Brooklyn, Inc., and any amendments thereto, acceptable to the Department. [CSL]
6. Submission of a photocopy of the adopted Amended and Restated Bylaws of Visiting Nurse Association of Brooklyn, Inc., acceptable to the Department. [CSL]

## Council Action Date

**October 11, 2012.**

# Programmatic Analysis

## Background

Empire State Home Care Services, Inc., is a not-for-profit Article 36 certified home health agency (CHHA) serving Bronx, Kings, New York, Queens, Richmond, and Westchester Counties, and long term home health care program (LTHHCP) serving New York County. Visiting Nurse Association of Brooklyn, Inc., is a not-for-profit Article 36 certified home health agency (CHHA) serving Kings County, and long term home health care program (LTHHCP) serving Kings and Queens Counties. The current non-member parent corporation of both is Visiting Nurse Regional Health Care System, a not-for-profit corporation.

The current proposal seeks to de-establish Visiting Nurse Regional Health Care System as the non-member parent corporation, and to establish Catholic Health Care System, d/b/a Archcare, a not-for-profit corporation, as the active sole member (parent) corporation of both Empire State Home Care Services, Inc. CHHA and LTHHCP, and Visiting Nurse Association of Brooklyn, Inc. CHHA and LTHHCP. The sole member (parent) corporation of Catholic Health Care System, d/b/a Archcare, is Providence Health Services, a not-for-profit corporation.

In addition to becoming the sole member corporation of Empire State Home Care Services, Inc. CHHA and LTHHCP, and Visiting Nurse Association of Brooklyn, Inc. CHHA and LTHHCP, Catholic Health Care System, d/b/a Archcare is also the member corporation of the following health care corporations:

- Calvary Hospital, Inc. - including Calvary Hospital (Hospital), Calvary Hospital Home Health Agency (CHHA), and Calvary Hospital Home Health Agency and 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),
- CMLTC, Inc., d/b/a Archcare Senior Life (PACE Program and proposed Managed Long Term Care Plan), and
- CSNP, LLC, d/b/a Archcare Advantage (Medicare Advantage Special Needs Plan)

All of the above health care facilities and providers in the Catholic Health Care System, d/b/a Archcare corporate structure are listed as affiliations for each board member named below.

The governing body of the ultimate member (parent) corporation, Providence Health Services, consists of the following board members:

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| **Cardinal Timothy Dolan**<br>(disclosure pending – see contingency) | **Bishop Robert Brucato**<br>(disclosure pending – see contingency) |
| **Bishop Dennis J. Sullivan**<br>Vicar General, Archdiocese of New York (Religious Organization) | **Monsignor Gregory A. Mustaciuolo, Esq.**<br>Chancellor, Archdiocese of New York (Religious Organization) |

The governing bodies of the member (parent) corporation, Catholic Health Care System, d/b/a Archcare, and of Empire State Home Care Services, Inc. CHHA and LTHHCP, and Visiting Nurse Association of Brooklyn, Inc. CHHA and LTHHCP, all consist of the same individual board members as follows:

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| **Francis J. Serbaroli, Esq.** (Chairperson)<br>Partner, Greenberg Traurig, LLP (Law Firm) | **Karl P. Adler, MD** (Vice-Chairperson / Secretary)<br>CEO, New York Medical College (Medical School) |

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| | Additional Affiliations: St. Vincent's Hospital, St. Clare's / St. Vincent's Midtown Hospital, Our Lady of Mercy Hospital, St. Agnes Hospital, Benedictine Hospital, St. Francis Hospital, Center for Comprehensive Health Practice (D&TC) |
| **Thomas M. O'Brien** (Vice-Chairperson)<br>Self Employed Banking Consultant | **Bishop Dennis J. Sullivan**<br>(disclosed above) |
| **Monsignor Gregory A. Mustaciuolo, Esq.**<br>(disclosed above) | **Manfred Altstadt, CPA**<br>Retired COO, Mutual of America (Insurance Corp) |
| **Joseph P. Anderson**<br>Retired CEO, Schaller Anderson, Inc. (Health Care Management / Administrative Services) | **Monsignor William Belford**<br>Diocesan Administrator / Parish Priest, Archdiocese of New York (Religious Organization) |
| **John T. Dunlap, Esq.**<br>Partner, Dunnington, Bartholow, and Miller, LLP (Law Firm) | **Monsignor Charles J. Fahey, LMSW**<br>Retired Professor, Fordham University (Higher Education)<br>Additional Affiliations: Village Center for Care, d/b/a VillageCare (RHCF, CHHA, and LTHHCP), Isabella Geriatric Center, Inc. (RHCF and LTHHCP) |
| **Thomas J. Fahey, MD**<br>Retired Senior VP, Memorial Sloan Kettering Cancer Center (Cancer Health Care), Retired Associate Dean, Cornell University Medical College (Medical College) | **Eric P. Feldmann**, Real Estate Broker<br>CEO / Executive Director, Sisters of Charity Housing Development Corporation (Affordable Housing) |
| **Rory Kelleher, Esq.**<br>Senior Counsel, Sidley Austin, LLP (Law Firm) | **Scott La Rue, Registered Dietician / Nutritionist**<br>CEO / President, Catholic Health Care System, d/b/a Archcare (NFP Health Care System) |
| **John Marinelli**<br>Managing Director, Arc Partners, Inc. (Consulting Firm) | **Kathryn K. Rooney, Esq.**<br>Retired Intern / Counsel to Senator Marchi, NYS Senate (State Government Legislature)<br>Additional Affiliations: Richmond University Medical Center (Hospital), Homemakers of Staten Island, Inc., d/b/a Safe Harbor Healthcare Services (LHCSA) |

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, and with the consultation of legal counsel, it is concluded that proceeding with the proposal is appropriate.

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The NYS Education Department's Office of the Professions, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, NYS Department of State Occupational Licensing, and NYS Unified Court System all indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. Submissions of Certificates of Good Standing by the attorneys listed above are pending (see contingency).

The Division of Hospital Certification and Surveillance reviewed the compliance history of all affiliated hospitals, and diagnostic and treatment center, for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against St. Vincent's Hospital in 2006 citing violations in medical resident working hours regulations. This action was resolved with a $6,000 civil penalty. An additional enforcement action was taken against St. Vincent's Hospital in 2007 citing violations in medical resident working hours regulations. This action was resolved with a $25,000 civil penalty. An additional enforcement action was taken against St. Vincent's Hospital in 2007 citing the elopement of two psychiatric patients, one of which committed suicide. This action was resolved with a $6,000 civil penalty. An additional enforcement action was taken against St. Vincent's Hospital in 2008 citing violations in medical resident working hours regulations. This action was resolved with a $12,000 civil penalty.

It has been determined that the hospitals, and diagnostic and treatment center, have provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of the affiliated nursing homes for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against Kateri Residence in 2009 based on a March, 2008 survey citing violations in Quality of Care; and Quality of Care: Accidents. The action was resolved with a $4000 civil penalty.

An enforcement action was taken against Mary Manning Walsh Nursing Home in 2005 based on May 2002, and September 2003, surveys citing violations in Quality of Care; and Quality of Care: Medication Errors. The action was resolved with a $3000 civil penalty.

An enforcement action was taken against St. Teresa's Nursing Home in in 2004 based on an August, 2003 survey citing violations in Quality of Care: Accidents. The action was resolved with a $2000 civil penalty.

An enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2004 based on a November, 2002 survey citing violations in Quality of Care. The action was resolved with a $1000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2005 based on an April, 2005 survey citing violations in Resident Assessment and Care Planning: Comprehensive Care Plans; Quality of Care: Accidents; Organization and Administration: Governing Body; and Organization and Administration: Nurse Aide Certification and Training. The action was resolved with a $4000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2007 based on a February, 2007 survey citing violations in Quality of Care: Accidents; and Organization and Administration. The action was resolved with a $3000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2009 based on a March, 2008 survey citing violations in Quality of Care: Accidents; Organization and Administration; and Organization and Administration: Governing Body. The action was resolved with a $6000 civil penalty. An additional enforcement action was taken against Terence Cardinal Cooke Health Care Center in 2011 based on an April, 2010 survey citing violations in Quality of Care: Highest Practicable Potential. The action was resolved with a $2000 civil penalty.

An enforcement action was taken against Village Center for Care, d/b/a VillageCare Rehabilitation and Nursing Center, in 2004 based on an April, 2003 survey citing violations in Quality of Care: Accidents. The action was resolved with a $2000 civil penalty. An additional enforcement action was taken against Village Center for Care, d/b/a VillageCare Rehabilitation and Nursing Center, in 2009 based on an April, 2008 survey citing violations in Quality of Care. The action was resolved with a $2000 civil penalty.

It has been determined that the affiliated nursing homes have provided a substantially consistent high level of care.

The Division of Home and Community Based Services reviewed the compliance history of all affiliated certified home health agencies, long term home health care programs, licensed home care service agencies, and hospices for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against Village Center for Care, d/b/a VillageCare Long Term Home Health Care Program in 2005 based on April 2005 and June 2005 surveys, citing violations in Policies and Procedures of Service Delivery; Patient Care; and Governing Authority. This action was resolved with a $3000 civil penalty, $1500 of which was suspended.

An enforcement action was taken against Village Center for Care, d/b/a VillageCare Certified Home Health Agency in 2005 based on an August 2005 survey, citing violations in Policies and Procedures of Service Delivery; and Governing Authority. This action was resolved with a $4000 civil penalty.

It has been determined that the certified home health agencies, long term home health care programs, licensed home care service agencies, and hospices have exercised sufficient supervisory responsibility to protect the health, safety, and welfare of patients and to prevent the recurrence of code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Division of Managed Long Term Care reviewed the compliance history of the affiliated Medicare Advantage Special Needs Plan, and PACE Program, for the time period 2002 to 2012, or for the time periods specified as the affiliations, whichever applied. It has been determined that both plans have provided a substantially consistent high level of care.

A review of all personal qualifying information indicates there is nothing in the background of the board members of Providence Health Services, Catholic Health Care System, d/b/a Archcare, Visiting Nurse Association of Brooklyn, Inc., and Empire State Home Care Services, 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, contingent approval is recommended.**

## Financial Analysis

### Capability and Feasibility

There are no significant issues of capability or feasibility associated with this application. There will be no change in the daily operations of each health care facility, although each facility is expected to experience cost benefits from the sole corporate member designation.

Presented as BFA Attachment B is the pro-forma balance sheet of Catholic Health Care System as sole Member, which shows on the first day of operation of VNA and Empire there will be an allocation of investment assets of $16,856,975 and $7,384,727, respectively, to both CHHAs, therefore maintaining positive working capital.

Presented as BFA Attachment C is the financial summary of the Visiting Nurse Regional Health Care System, Inc., which has maintained positive net asset positions and generated excess revenues in 2011, and also through March 31, 2012. The applicant indicates that Visiting Nurse Regional Health Care System, Inc. allocates a significant proportion of their liquid investment assets as long term assets, which are available and should be taken into consideration in reviewing for positive working capital for 2011, as well as through March 31, 2012.

Presented as BFA Attachments D is the financial summary of the Catholic Health Care System, Inc., which has maintained positive working capital, net asset positions, and experienced a net loss from operations in the years shown for 2011, and also through March 31 2012. The net losses from operations are due to the start-up of its PACE program, a dual-eligible Managed Long Term Care Plan. The applicant indicates that the losses will be eliminated once the program is fully operational and generates revenue to cover its operating expenses.

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

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| BFA-Attachment A | Organizational Chart |
| BFA-Attachment B | Pro-forma Balance Sheet |
| BFA-Attachment C | Financial Summaries for Visiting Nurse Regional Health Care System, Inc., 2011 and March 31, 2012 internal |
| BFA-Attachment D | Financial Summary for Catholic Health Care System 2011 and March 31, 2012 internal |

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 11th day of October, 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 Catholic Health Care System d/b/a Archcare, to become the sole corporate member of Empire State Home Care Services and Visiting Nurse Association of Brooklyn, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that 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 |
|---|---|
| 121358 E | Catholic Health Care System d/b/a Archcare |

APPROVAL CONTINGENT UPON:

1. Submission of completed, signed, and notarized Schedule 2As and Schedule 2Cs for Cardinal Timothy Dolan and Bishop Robert Brucato. [LTC]
2. Submission of Certificates of Good Standing for the following attorneys: Monsignor Gregory A. Mustaciuolo, Francis J. Serbaroli, John T. Dunlap, Rory Kelleher, and Kathryn K. Rooney. [LTC]
3. Submission of a photocopy of the executed Certificate of Incorporation of Empire State Home Care Services, Inc., and any amendments thereto, acceptable to the Department. [CSL]
4. Submission of a photocopy of the adopted Amended and Restated Bylaws of Empire State Home Care Services, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed Certificate of Incorporation of Visiting Nurse Association of Brooklyn, Inc., and any amendments thereto, acceptable to the Department. [CSL]
6. Submission of a photocopy of the adopted Amended and Restated Bylaws of Visiting Nurse Association of Brooklyn, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy
Acting Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

# Public Health and Health Planning Council

## Project # 121318-E

## Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care

***County:*** **St. Lawrence (Canton)**
***Purpose:*** **Establishment**

***Program:*** **Certified Home Health Agency**
***Submitted:*** **April 20, 2012**

## Executive Summary

### Description

Northern Lights Health Care Partnership, Inc., d/b/a Northern Lights Home Health Care, a proposed Article 36 not-for-profit corporation, requests approval to establish a new certified home health agency (CHHA) to serve St. Lawrence County. The members of Northern Lights Health Care Partnership, Inc., consist of four health care organizations from St. Lawrence County: Claxton-Hepburn Medical Center, Ogdensburg; United Helpers Management Company, Inc., Ogdensburg; Canton-Potsdam Hospital, Potsdam; and Hospice and Palliative Care of St Lawrence Valley, Inc., Potsdam. Each of the four proposed members will have a 25% interest in the applicant.

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. Northern Lights Health Care Partnership, 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.

### DOH Recommendation

Contingent approval.

### Need Summary

The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as unmet community need. The information presented demonstrated the applicants in depth knowledge of the health needs of the community.

### Program Summary

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: | *Revenues:* | *$ 2,013,400* |
| | *Expenses:* | *1,684,870* |
| | *Gain/(Loss):* | *$ 328,530* |

Subject to the noted contingencies, 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 building lease that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Management and Administrative Services Agreement between the applicant and United Helpers Canton Nursing Home, Inc. acceptable to the Department. [BFA, CSL]
3. Submission of a photocopy of the signed and dated Certificate of Incorporation of Northern Lights Health Care Partnership, Inc., acceptable to the Department. [CSL]
4. Submission of evidence of adoption of the bylaws of Northern Lights Health Care Partnership, 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 by the Council. [CHA]

Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

Northern Lights Home Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care is requesting approval to establish a new Article 36 Certified Home Health Agency (CHHA) to serve St. Lawrence County.

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 would 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 would ensure access to CHHA services in counties with fewer than two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

The Northern Lights Home Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care's (NLHCP) proposal demonstrated the applicants' capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. The proposed CHHA is a collaboration of four health care organizations: Canton-Potsdam Hospital, Hospice of St. Lawrence Valley, Inc., United Helpers Management Company, Inc., and Claxton-Hepburn Medical Center. The applicant described their experience providing services to Medicare and Medicaid beneficiaries and the advantages the establishment of the proposed CHHA will have in aligning their

operations with MRT Initiatives. The applicant described strategies to transition Medicaid beneficiaries from traditional fee-for-service to MLTCPs. The proposed CHHA will assure continuity of care for patients by providing case management to patients of all four NLHCP collaborating organizations.

NLHCP discussed the challenges posed by St. Lawrence County's size and geographically dispersed population. By combining resources NLHCP providers will have the necessary capacity to meet home health care needs of residents countywide. NLHCP provided details of their existing linkages and referral sources within the county and described their experience as providers of health care to Medicare and Medicaid beneficiaries. The collaborations offer an existing network of relationships that will support and enhance the effectiveness of home health care delivery by the proposed CHHA.

The applicant provided comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as unmet community need. The information presented demonstrated the applicants in depth knowledge of the health needs of the community. They also described the in and out-migration for specific services and surmised that St. Lawrence county residents rely more heavily on their local health care system for primary and recovery care than they do for complex medical and surgical cases. The applicant also showed that county residents who travel outside of the region for advanced procedures were unable to return to the region for home health care due to lack of capacity among home health care providers.

One of the collaborating organizations currently cross-trains CNA's and HHA's who can work both in home care and in residential services. Strategic placement of staff will reduce staff travel time, maximizing productivity and containing costs and ensure county wide coverage. The applicant also discussed Health Information Technology used by the partnership members as well as plans for a technology subcommittee to review current resources and develop protocols for the CHHA. Their proposal demonstrated how they will improve care coordination, reduce inadequate care transitions and build access to efficient/effective community-based systems of care.

Recommendation

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

## Programmatic Analysis

Background

Northern Lights Home Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care 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 St. Lawrence. The proposed CHHA is collaboration by four St. Lawrence health care organizations: Canton-Potsdam Hospital, Hospice of St. Lawrence Valley, Inc., United Helpers Management Company, Inc., and Claxton-Hepburn Medical Center.

The applicant proposes to operate the CHHA from an office located at 205 State Street Road, Canton, New York 13617. 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 |
| Audiology | Personal Care |
| Respiratory Therapy | Homemaker |
| Housekeeper | |

The Board of Directors of Northern Lights Home Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care will be as follows:

| | |
|---|---|
| **Brian D. Gardam** – Chairperson<br>Executive Director, Hospice of Palliative Care of | **Steve E. Knight** – Vice Chairperson<br>Chief Executive Officer – United Helpers |

St. Lawrence Valley
Affiliations:
- Canton-Potsdam Hospital (2011-present)
- Canton Enriched Housing (2006-present)
- Planned Parenthood of Northern NY (2006-2008)

Management Company

**David B. Acker, Esq.** – Treasurer
President, Chief Executive Officer, Canton-Potsdam Hospital
Affiliations:
- Warren State Hospital, Pennsylvania (2002-2003)

**Jennie H. Flanagan, RN** – Secretary
Director of Compliance/Accreditation, Claxton-Hepburn Medical Center

**Margaret E. Madden** – Director
Provost and Vice President of Academic Affairs and Professor of Psychology, State University of New York at Potsdam
Affiliations:
- Canton-Potsdam Hospital (2004-present)

**Rev. Thomas T. Patterson** – Director
Retired
Affiliations:
- Hospice of St. Lawrence Valley (2003-present)
- Claxton-Hepburn Medical Center (1978-present)

**Maureen L. Missert** – Director
Substitute Teacher, Ogdensburg City School District
Affiliations:
- Claxton-Hepburn Medical Center (2003-present)

**Martha K. MacArthur**
Retired
Affiliations:
- United Helpers Nursing Home (2009-present)
- United Helpers Canton Nursing Home (2009-present)
- United Helpers Residence (2009-present)
- United Helpers Care, Inc. (2009-present)

Northern Lights Home Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care will have four corporate members:, Canton-Potsdam Hospital, Hospice of St. Lawrence Valley, Inc., United Helpers Management Company, Inc., and Claxton-Hepburn Medical Center.

The Board of Directors of Canton-Potsdam Hospital is as follows:

**Margaret E. Madden** – Chairperson
(Previously Disclosed)

**Judy C. Chitten** – Vice Chairperson
Retired
Affiliations:
- Canton-Potsdam Hospital Foundation

**John E. Dewar, MD** – 2nd Vice Chairperson
Detox Unit Director, Canton-Potsdam Hospital

**Kathryn L. Mullaney** – Treasurer
Vice President of Finance, St. Lawrence University

**Judy A. Chase** – Secretary
Dental Hygienist, Smile Associates

**Ronald E. Berry**
Retired

**Paul A. Cole** – Director
Supervisory/Public Health, United State Department of Agriculture

**Mark J. Cornett** – Director
General Manager, NexID Biometrics, LLC

**Brian P. Gardam** – Director
(Previously Disclosed)

**Michael P. Griffin** – Director
Director of News and Digital Content Services, Clarkson University

**Mary Anne Healey, RN** – Director
RN Office Manager, Healey Medical Practice
Affiliations:
- Caregivers (2003-present)

**John A. Kaplan** – Director
Chief of Police, SUNY Potsdam

**Laurie B. Maki, RN** – Director
Public Health Educator, St. Lawrence County Public Health Department

**Paul B. McGrat**h – Director
Professor, Clarkson University

**David C. Patterson** – Director
Owner/President, Wight & Patterson, Inc.

**Duane M. Pelkey** – Director
Team Leader, Community Bank

**June M. Peoples** – Director
Membership Director, North Country Public Radio

**Penelope A. Rattan, NHA** – Director
Retired

**James C. Theodore** – Director
Senior Vice President, Financial Advisor, Portfolio Management Director, Financial Planning Specialist, Morgan Stanley Smith Barney

**Spencer F. Thew** – Director
Director Construction Engineering Management, Clarkson University

**Michael J Tulloch, MD** – Director
Part-time Physician, Sun Mount
Physician, Self Employed

The Board of Directors of Hospice of St. Lawrence Valley, Inc. is as follows:

**Rev. Thomas T. Patterson** – President
(Previously Disclosed)

**David E. Hornung** – Vice President
University Professor, St. Lawrence University

**Ronald C. Romano** – Treasurer
Retired

**Normadine Kennedy** – Secretary

**Margaret K. Bass** – Director
Professor, St. Lawrence University

**Tara M. Freeman**
University Photographer, St. Lawrence University

**Edward I. Gordon, DVM** – Director
Veterinarian, Potsdam Humane Society
Affiliations:
- United Helpers Nursing Home (2002-present)
- United Helpers Canton Nursing Home (2002-present)
- United Helpers Residence, Inc. (2002-present)
- United Helpers Care, Inc. (2002-present)

**Chad W. Green** – Director
President-Owner/Licensed Manager, Donaldson Funeral Home, Inc.

- Leap (2007-present)

**Linda S. Griffin** – Director
Retired
Affiliations:
- Planned Parenthood of North Country New York

**Helen W. Hutchinson** – Director
Retired

**Marlinda L. LaValley** – Director
Vice President for Administrative Services, Corporate Compliance Officer, Canton- Potsdam Hospital

**Robin McClellan III** – Director
Adjunct Instructor, SUNY Canton
Consulting, Self-employed

**Francis H. McLaughlin** – Director
Professor, State University of New York

**James E. Morrison** – Director
Director of Finance, United Helpers Management Company

**David H. Moulton** – Director
Branch Manager, NBT Bank

**June F. O'Neill** – Director
Employer Outreach Manager, Office of NYS Comptroller

**Elaine A. Scott** – Director
Administrative Assistant, Canton-Potsdam Hospital

The Board of Directors of United Helpers Management, Inc. is as follows:

**Martha K. MacArthur** – President
Retired
Affiliations:
- United Helpers Nursing Home (2009-present)
- United Helpers Canton Nursing Home (2009-present)
- United Helpers Residence, Inc. (2009-present)
- United Helpers Care, Inc. (2009-present)

**Wayne N. Ladouceur** – 1st Vice President
Owner/Producer/Director,
Video Images Productions
Affiliations:
- United Helpers Nursing Home (2009-present)
- United Helpers Canton Nursing Home (2009-present)
- United Helpers Residence, Inc. (2009-present)
- United Helpers Care, Inc. (2009-present)

**Nancy Rehse** – 2nd Vice President
Retired
Affiliations:
- United Helpers Nursing Home (2011-present)
- United Helpers Canton Nursing Home (2011-present)
- United Helpers Residence, Inc. (2011-present)
- United Helpers Care, Inc. (2011-present)

**Francine Naccarato** – Secretary/Treasurer
Retired
Affiliations:
- United Helpers Nursing Home (2011-present)
- United Helpers Canton Nursing Home (2011-present)
- United Helpers Residence, Inc. (2011-present)
- United Helpers Care, Inc. (2011-present)

**Ronald L. Bovay** – Director
Owner, Richville Furniture

**William Bradley**
Retired

Affiliations:
- United Helpers Nursing Home (2009-present)
- United Helpers Canton Nursing Home (2009-present)
- United Helpers Residence, Inc. (2009-present)
- United Helpers Care, Inc. (2009-present)

**Cheryl M. Cruickshank, RN** – Director
Retired
Affiliations:
- United Helpers Nursing Home (2005-present)
- United Helpers Canton Nursing Home (2005-present)
- United Helpers Residence, Inc. (2005-present)
- United Helpers Care, Inc. (2005-present)

**Patricia A. Lewis** – Director
Retired
Affiliations:
- United Helpers Nursing Home (2009-present)
- United Helpers Canton Nursing Home (2009-present)
- United Helpers Residence, Inc. (2009-present)
- United Helpers Care, Inc. (2009-present)

**Norton W. Taylor, Licensed Pharmacist** – Director
Retired
Affiliations:
- United Helpers Nursing Home (2009-present)
- United Helpers Canton Nursing Home (2009-present)
- United Helpers Residence, Inc. (2009-present)
- United Helpers Care, Inc. (2009-present)

Affiliations:
- United Helpers Nursing Home (2002-present)
- United Helpers Canton Nursing Home (2002-present)
- United Helpers Residence, Inc. (2002-present)
- United Helpers Care, Inc. (2002-present)

**Edward I. Gordon, DVM** – Director
(Previously Disclosed)

**James Michaels**on – Director
Retired
Affiliations:
- United Helpers Nursing Home (2003-present)
- United Helpers Canton Nursing Home (2003-present)
- United Helpers Residence, Inc. (2003-present)
- United Helpers Care, Inc. (2003-present)

The Board of Directors of Claxton-Hepburn Medical Center is as follows:

**Maureen L. Missert** – Chairperson
(Previously Disclosed)

**Philip A. Cosmo** – Secretary
City Comptroller, City of Ogdensburg

**Christopher F. Brandy, MD** – Director

**Joseph E. Tracy** – Vice President
Retired

**Chet A. Truskowski** – Treasurer
Commercial Manager,
Citizen Telephone Company

**Clive B. Chambers** – Director

| | |
|---|---|
| Surgeon, Self-employed | Retired |
| **Tracy L. Lafair, MD** – Director<br>Physician, Self-employed | **Macreena A. Doyle** – Director<br>Coordinator of New Services,<br>St. Lawrence University |
| **Linda L. Fay, RN** – Director<br>Retired | **Bryan J. Felitto** – Director<br>Retired |
| **Mary E. LaComb** – Director<br>Volunteer, Frederic Remington Art Museum | **Sister Mary Teresa LaBrake** – Director<br>Pastoral Associate, St. Mary's Cathedral |
| **Ted L. Lawrence** – Director<br>Retired | **Sister Mary E. Looby** – Director<br>Pastoral Associate, Malone Catholic Parishes |
| **Rev. Thomas T. Patterson** – Director<br>(Previously Disclosed) | **Lawrence F. Sears** – Director<br>Retired |
| **Michael Seidman, MD** – Director<br>Physician, Self-employed | **Russell B. Strait** – Director<br>Owner, Harrison A. Rogers Agency |
| **James S. Thew** – Director<br>Principal, Thew Associates PE-LS, PLLC | |

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 State Bar of Montana verifies the active attorney registration associated with this application.

The Supreme Court of Pennsylvania verifies the active attorney registration associated with this application.

The Bureau of Professional Credentialing has indicated that Penelope Rattan NHA license #02639 holds a NHA license issued on January 1, 1975 and it currently inactive. It is 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:

- Canton-Potsdam Hospital
- Canton Enriched Housing
- Claxton-Hepburn Medical Center
- Hospice of St. Lawrence Valley, Inc.
- United Helpers Nursing Home
- United Helpers Canton Nursing Home
- United Helpers Residence
- United Helpers Care, Inc.
- Leap (2007-present)
- Caregivers (2003-present)
- Warren State Hospital, Pennsylvania (2002-2003)

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:

United Helpers Canton Nursing Home, Inc. was fined one thousand dollars ($1,000) pursuant to a stipulation and order dated March 28, 2007 for surveillance findings of September 27, 2006. Deficiencies were found under 10 NYCRR 415.12(i)(1) Quality of Care: Nutrition.

The information provided by the Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated that the nursing homes 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 Division of Quality Improvement, Bureau of Program Certification has indicated that the OPWDD facilities 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 Bureau of Community and Hospital Operations in Pennsylvania has indicated that Warren State Hospital 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.

### Management and Administrative Services Agreement

The applicant has submitted a draft management and administrative services agreement; the terms are summarized below:

| | |
|---|---|
| *Facility:* | Northern Lights Home Health Care Partnership, Inc., d/b/a Northern Lights Home Health Care |
| *Contractor:* | United Helpers Canton Nursing Home, Inc., d/b/a Canton Home Health Care |
| *Services Provided:* | Quality Improvement Program; Patients' Rights and Incident Reporting:<br>Assist with maintenance and implementation and complying with the applicable state and federal laws and regulations.<br><u>Financial</u>:<br>Accounting services, including preparation of financial statements; assist in developing annual budgets; assist in the preparation and submission of bills to payors, accounts receivable and accounts payable management; process of |

| | |
|---|---|
| | payrolls; negotiation of 3rd party payor participation agreements; and billing review. Patient Referral, Admission and Discharge; Patient Assessment and Plan of Care; and Service Delivery: Assist with maintenance and implementation of policies and procedures and complying with the applicable regulations. Recruitment of Additional Staff and Training; Providing Physician Clearance, and Medicaid/Medicare Provider and Employee Exclusion Checks; Completion of Consumer Assessment of Healthcare Providers and System Reports and Surveys; assist with Clinical Records and Complaint Procedures. |
| *Term:* | 3 year – may be renewed only if authorized by the DOH as required by 10 NYCRR 763.11 and upon the mutual written consent of the Parties. |
| *Fee:* | Total Annual Fee $307,683 (1/12 to be paid monthly or $25,640.25) |

The administrative services provider is affiliated with United Helpers Management Company, Inc., a member of the applicant.

Lease Rental Agreement

The applicant has submitted a letter of interest to lease the proposed site, the terms of which are summarized below:

| | |
|---|---|
| *Premises:* | 242 gross square feet located at 205 State Street Road, Canton, NY |
| *Landlord :* | United Helpers Canton Nursing Home, Inc., d/b/a Maplewood Health Care and Rehabilitation Center |
| *Lessee:* | Northern Lights Health Care Partnership, Inc., d/b/a Northern Lights Home Health Care |
| *Term:* | 1 year at $2,424 per year ($10.02 per sq. f.t) Automatic renewals of one year in length |
| *Provisions:* | Insurance and Maintenance |

The lease is a non-arm's length arrangement as the landlord is affiliated United Helpers Management Company, Inc., a member of the applicant.

Operating Budget

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

| | First Year | Third Year |
|---|---|---|
| Description: | | |
| Medicaid | $375,367 | $544,937 |
| Medicare | 686,208 | 1,274,384 |
| Commercial | 104,503 | 194,079 |
| Total Revenues | $1,166,078 | $2,013,400 |
| | | |
| Total Expenses | $1,088,147 | $1,684,870 |
| Net Income or (Loss) | $77,931 | $328,530 |

Utilization by payor source for the first & third year is anticipated as follows:

| | |
|---|---|
| Medicaid Manage Care | 34% |
| Medicare Fee-for-Service | 54% |
| Commercial Manage Care | 10% |
| Charity Care | 2% |

Expense projections were based on industry norms adjusted for the projected case load and case mix. Also, the projected expenses were consistent with the experience from existing upstate NY CHHAs. Patient utilization projections are based on the need analysis, as well as applicant members' historical CHHA referral data.

The Medicaid average episode payment is expected to be $4,019 based upon the North County Wage Index Factor of .95561 and an average case mix of .738765. As a conservative measure Medicaid revenues were based upon the lower of projected cost at $2,629 per episode in the first year and $2,055 per episode in the third year. Medicare revenues were based upon regional episodic payments of $3,025 per episode.

### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at $280,812, which appear reasonable based on two months of third year expenses. Presented as BFA Attachment A through D are the proposed members' 2010 and 2011 certified financial summaries which indicates the availability of sufficient resources for the project.

The budget projects an operating surplus of $77,931 and $328,530 in the first and third years, respectively. Revenues are based upon the following: episodic payment methodology was utilized in developing Medicare revenues; Medicaid revenues were based upon the episodic payment methodology and then as a conservative measure adjusted lower to reflect projected cost; and commercial payors were based on regional historical rates. The budget appears reasonable.

A review of BFA Attachments A through D shows the following: Attachment A, Claxton-Hepburn Medical Center has a positive average working capital position of $16,748,692 and generated an average excess revenues over expenses of $1,923,705; Attachment B, United Helpers Management Company, Inc. has a positive average working capital position of $219,250 and generated a small average loss of $27,365, and when you consider the positive results for the seven months ending July 2012 of $79,259 the average loss turns into a positive surplus of $8,176; Attachment C, Canton-Potsdam Hospital has a positive average working capital position of $7,140,820 and generated average excess revenues over expenses of $1,307,364; Attachment D, Hospice and Palliative Care of St. Lawrence Valley, Inc., generated average excess revenues over expenses of $409,356 and based on the July 31, 2012 internal financial statements the working capital was $2,446,420.

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, Claxton-Hepburn Medical Center |
| BFA Attachment B | Financial Summary for 2010 and 2011, United Helpers Management Company, Inc. |
| BFA Attachment C | Financial Summary for 2010 and 2011, Canton-Potsdam Hospital |
| BFA Attachment D | Financial Summary for 2010 and 2011, Hospice and Palliative Care of St. Lawrence Valley, Inc. |
| BFA Attachment E | 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 11th day of October, 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 certified home health agency in St. Lawrence 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 |
|---|---|
| 121318 E | Northern Lights Health Care Partnership, Inc. d/b/a Northern Lights Home Health Care |

APPROVAL CONTINGENT UPON:

1. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the executed Management and Administrative Services Agreement between the applicant and United Helpers Canton Nursing Home, Inc. acceptable to the Department. [BFA, CSL]
3. Submission of a photocopy of the signed and dated Certificate of Incorporation of Northern Lights Health Care Partnership, Inc., acceptable to the Department. [CSL]
4. Submission of evidence of adoption of the bylaws of Northern Lights Health Care Partnership, 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 by 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
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

# Public Health and Health Planning Council

## Project # 122120-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, formerly known as Beth Abraham Family of Health Services) is an existing not-for profit nonsectarian, multi-service continuing and managed care provider. Centerlight presently operates four nursing facilities, a myriad of community based programs, a licensed home care agency and senior housing and is requesting permission to establish CenterLight Certified Home Health Agency, a new not- for-profit certified home health agency (CHHA) to operate in Rockland County.

Via CON #121309-E, the Public Health and Health Planning Council contingently-approved CenterLight on August 9, 2012 to serve the downstate counties of Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester.

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 Health System submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to 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.

### DOH Recommendation
Contingent approval.

### Need Summary
The applicant demonstrated public need based on 709.1(a) and provided a description of community need and the health needs of the community supported by data including a gap analysis.

### Program Summary
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: | *Revenues:* | *$ 313,150* |
| | *Expenses:* | *269,545* |
| | *Gain/(Loss):* | *$ 43,605* |

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. Submission of a photocopy of the signed and dated Certificate of Incorporation 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 by the Council. [LTC]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Center Light Certified Home Health Agency, Inc. seeks to establish a Certified Home Health Agency (CHHA) to serve the downstate counties of Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester, and the upstate county of Rockland. The downstate counties were assigned CON project number 121309-E which was approved by PHHPC on August 9, 2012. This current CON project number 122120-E seeks approval for the upstate county of Rockland.

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 would 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 would ensure access to CHHA services in counties with fewer than two 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

Centerlight Certified Home Health Agency's proposal described and adequately addressed each of the review criteria used to make determinations for this competitive review. The proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these

initiatives. The applicant discussed in detail how they will improve efficiencies, decrease fragmentation and provide greater care coordination through the establishment of the proposed CHHA. The applicant currently operates a PACE program, MLTCP, Nursing Home and LHCSA each with a history of providing consistently high levels of care. The addition of a CHHA will provide the foundation for an integrated health care system. The applicant provided extensive information regarding their existing relationships and linkages with all service provider types within the counties they propose to serve.

The applicant demonstrated public need based on 709.1(a) and provided a description of community need and the health needs of the community supported by data, including a gap analysis. The applicant has the requisite knowledge and experience in the provision of home health services and demonstrated the capacity to produce efficiencies in the delivery of home care services through their use of health information technology and focus on the reduction of hospitalizations.

The applicant also requested approval to serve the following downstate counties: Bronx, Kings, Queens, New York, Richmond, Westchester, Nassau, and Suffolk Counties. A recommendation for approval for the downstate counties was presented to the Council and approved at the August 9, 2012 meeting.

### Recommendation

**From a need perspective, approval 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 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 &

**Stefan A. Kampe**
Retired

Rehabilitation Center
(2005 – present)

**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 that 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 downstate counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, and Westchester. A recommendation for approval for the downstate counties was presented to the Council and approved at the August 9, 2012 meeting.

### 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:

| | Year One | Year Three |
|---|---|---|
| Revenues: | | |
| Medicaid Fee-for-Service | $53,756 | $45,535 |
| Medicaid Managed Care | 52,099 | 160,724 |
| Medicare Fee-for Service | 46,782 | 104,851 |
| Medicare Managed Care | 3,585 | 0 |
| Private Pay | 850 | 2,040 |
| Total Revenues | 157,072 | 313,150 |
| Expenses | $131,318 | $269,545 |
| Net Gain(Loss) | $25,754 | $43,605 |

Utilization by payor source for combined programs in the first and third years is as follows:

| Payor | Year One | Year Three |
|---|---|---|
| Medicare | 23.95% | 23.31% |
| Medicaid Fee-for-Service | 35.07% | 15.19% |
| Medicaid Managed Care | 35.41% | 55.78% |
| Private Pay | .55% | .62% |
| Charity Care | 5.02% | 5.10% |

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 $44,924, appear reasonable based on two months of third year expenses and will be provided through the existing operation.
The available of funds to cover the working capital requirements are shown on BFA Attachment A.

The submitted budget indicates that the applicant will achieve incremental net revenue of $25,754 and $43,605 in the first and third years of operations, respectively. Revenue is based on current payment rates for Certified Home Health Agencies.

Presented as BFA Attachment A is the 2009-2010 audited financial summary of Bethco Corporation and Affiliates which is the parent company for CenterLight Health System, Inc, and which became CenterLight Health Systems, Inc. in 2012, which shows the applicant has maintained positive working capital and net asset positions and achieved an average net income of $14,981,241 for the period 2009-2010.

BFA Attachment B is the internal 2011 financial summary for Bethco, which shows that the applicant continues to maintain positive working capital and net assets positions but they have 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 work capital and net asset positions and has a net loss of $4,663,749 prior to non operating activity income of $5,495,883, which allowed the facility to have an overall positive income position 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.**

## Attachments

| | |
|---|---|
| BFA Attachment A | Certified Financial Summary for Bethco Corporation and Affiliates (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 |

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 11th day of October, 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 establish CenterLight Certified Home Health Agency, a not-for-profit CHHA to operate in Rockland 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 |
|---|---|
| 122120 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. Submission of a photocopy of the signed and dated Certificate of Incorporation 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 by the Council. [LTC]

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 # 122121-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 Rockland County. The applicant is a member of the Jewish Home Lifecare System and several not-for-profit and for profit organizations, providing resident care, residential and related services, including fundraising.

Via CON #121252-E, the Public Health and Health Planning Council contingently-approved Jewish Home Lifecare, Community Services on August 9, 2012 to serve the downstate counties of Kings, Queens, Richmond, Bronx, New York, Westchester, Nassau and Suffolk.

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. Jewish Home Lifecare 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.

### DOH Recommendation
Contingent approval.

### Need Summary
The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as unmet community need. Approval of this application will allow Jewish Home Life to enhance care coordination and extend their continuum of care for discharges from acute care and nursing home settings to home care.

### 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.

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

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 177,546* |
| | *Expenses:* | *137,569* |
| | *Gain/(Loss):* | *$ 39,977* |

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]

**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 by the Council. [CHA]

## Council Action Date

**October 11, 2012.**

# Need Analysis

## Background

Jewish Home Lifecare, Community Services is a proposed not-for-profit corporation requesting approval to establish a new Article 36 Certified Home Health Agency (CHHA) to serve the downstate counties of Bronx, Kings, New York, Queens, Richmond, Westchester, Nassau, and Suffolk and the upstate county of Rockland.

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 would 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 would 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 for each county they proposed to serve. If applicants requested Upstate and Downstate counties, they are being 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.

The proposal demonstrated the applicant's organizational capacity to successfully implement the MRT initiatives and support the goals of the Department in advancing these initiatives. The applicant discussed the establishment of a partnership with a MLTCP to facilitate the transition of Medicaid beneficiaries from fee-for-service programs to MLTCP's. The applicant detailed extensive experience with care coordination for dual eligibles through their existing home care programs and provided details on established community linkages that enhance their continuum of care.

The applicant provided a comprehensive analysis of demographic data to establish public need based on 709.1(a) as well as unmet community need. The applicant's operation of LTHHCPs, and LHCSA's establishes their knowledge and experience in the provision of home health services. Each of their agencies has a history of providing consistently high levels of care. The application provided a description how the agency will use patient data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in health outcomes. Approval of this application will allow Jewish Home Life to enhance care coordination and extend their continuum of care for discharges from acute care and nursing home settings to home care.

The applicant also requested approval to serve the following Downstate counties: Bronx, Kings, New York, Queens, Richmond, Westchester, Nassau and Suffolk Counties. A recommendation for approval for the Downstate counties was presented to the Council and approved at the August 9, 2012 meeting.

### Recommendation

**From a need perspective, approval 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 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
Affiliations:
- Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx,
- Jewish Home Lifecare, Manhattan
- Jewish Home Lifecare, Sarah Neuman Center, Westchester
- Educational Alliance (2006-present)

**Olumide S. Wilkey** – Treasurer, Trustee
Certified Financial Advisor, UBS Financial Services, Inc.

**Mel P. Barkan, Esq.** – Trustee
Counsel, Windels Marx Lane and Mittendorf, LLP
Affiliations:
- The Bridge, Inc. and Affiliates

**Ann Berman** – Trustee
Freelance Writer, Self

**Susan Glickman** – Vice Chair, Trustee
Retired

**Edward W. Gordon** – Trustee
President/Executive, W.W. Gordon & Co., Inc. – Preservation Capital Partners

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,

**Scott A. Hasen** – Trustee
Vice President, Healthcare Research Analyst, J.P Mogan

**Joy A. Henshel** – Trustee
Retired
Affiliations:

- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Nancy Hirschtritt, LCSW** – Trustee
Retired

**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

**William Kummel** – Trustee
Logistics and Marketing Management Consultant, Rational Partners, LLC

**Marilyn Margon** – Trustee
Self, Consulting Business

**David A. Strumwasser, Esq.** – Trustee
Retired
Affiliations:

- Jewish Home Lifecare, Sarah Neuman Center, Westchester

**Joan Wachtler, LCSW** – Trustee
Retired

**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

**Susan Glickman** – Vice Chair, Trustee
(Previously Disclosed)

**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

**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

**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

**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

**Joel A. Hirshtritt, Esq.** – Trustee
Lawyer, Tannenbaum Helpern Syracuse and Hirshtritt, LLC
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)

**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

**Russell E. Makowsky, Esq.** – Trustee
(Previously Disclosed)

**Lynn Oberlander, Esq.** – Trustee
General Counsel, The New Yorker
Affiliations:
- Jewish Home Lifecare, Harry & Jeanette

**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

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 that 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 dates 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 that 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 downstate counties: New York, Westchester, Nassau, Suffolk Counties. A recommendation for approval for the downstate counties was presented to the Council and approved at the August 9, 2012 meeting.

### Recommendation

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

## Financial Analysis

### Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | $15,859 | $11,552 |
| Medicaid Managed Care | 14,175 | 100,073 |
| Medicare Fee-for-Service | 18,431 | 53,021 |

| | | |
|---|---|---|
| Medicare Managed Care | 0 | 12,900 |
| Other | 150 | 0 |
| Total Revenues | $48,615 | $177,546 |
| Expenses | $37,539 | $137,569 |
| Net Gain | $11,076 | $39,977 |

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

| | Year One | Year Three |
|---|---|---|
| Medicaid Fee-for-Service | 44.43% | 8.82%% |
| Medicaid Managed Care | 44.43% | 79.10% |
| Medicare Fee-for-Service | 8.52% | 6.25% |
| Medicare Managed Care | 0% | 3.32% |
| Other | .62%% | .51% |
| Charity Care | 2.00% | 2.00% |

Expense assumptions are based on nursing visits 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 $22,928, 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 gain of $11,076 and a gain of $35,977 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 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 Jewish Home Lifecare Community Services |
| 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 11th day of October, 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 Rockland 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 |
|---|---|
| 122121 E | Jewish Home Lifecare, Community Services |

APPROVAL CONTINGENT UPON:

1. Submission of an executed sublease agreement 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 by 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
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

**FROM:** James Dering, General Counsel

**DATE:** August 16, 2012

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation

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Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation. This not-for-profit corporation seeks Public Health and Health Planning Council approval to change its name to "North Shore-LIJ Stern Family Center for Rehabilitation." Public Health and Health Planning Council approval for a change of corporate name is required in this instance by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a)(1).

Also attached is a letter dated February 28, 2012 from Lauren Campisi, attorney for the corporation. As explained in that letter, the name change is intended to more accurately reflect the services provided by the hospital. The corporation has shifted its core business to short-term rehabilitation. Additionally, the corporation wishes to more closely align itself with the North Shore-LIJ system.

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment of the Certificate of Incorporation of North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation is in legally acceptable form.

Attachments

145 Community Drive
Great Neck, New York 11021
Tel (516) 465 8389
Fax (516) 465 8105

Office of Legal Affairs

Lauren E. Campisi, Esq.
Senior Associate General Counsel

February 28, 2012

Public Health and Health Planning Council ("Council")
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

**Re: Proposed Certificate of Amendment of the Certificate of Incorporation of North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation to North Shore-LIJ Stern Family Center for Rehabilitation ("Stern")**

Dear Council:

We respectfully submit this letter in support of our name change application and wish to explain the reasoning for the proposed change.

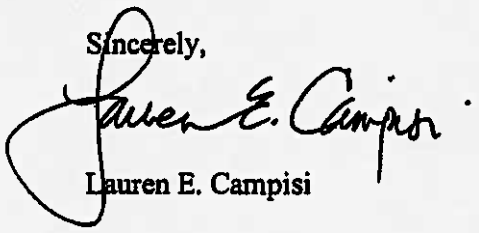
Stern was incorporated on November 24, 1967 under the name North Shore Hospital Nursing Home, Inc. In 1989, the name of the corporation was changed to North Shore University Hospital Center for Extended Care and Rehabilitation and then, in 2006, the name was changed to North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation.

At the time of the most recent name change, Stern served a frail elderly long term care population. Over the past six (6) years, to meet the needs of our patients, medical advances and the changing market, Stern has shifted its core business to short term rehabilitation. Stern's current patient mix reflects eight-five percent (85%) short term and fifteen percent (15%) long term care.

For purposes of: (1) more closely aligning itself with the North Shore-LIJ Health System; (2) mitigating confusion for both internal and external customers; and (iii) accurately reflecting its core business, the corporation wishes to removed "Extended Care" from its new name, North Shore-LIJ Stern Family Center for Rehabilitation.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general.

Sincerely,



Lauren E. Campisi

**CERTIFICATE OF AMENDMENT**

**OF THE**

**CERTIFICATE OF INCORPORATION**

**OF**

**NORTH SHORE UNIVERSITY HOSPITAL**
**STERN FAMILY CENTER FOR EXTENDED CARE AND REHABILITATION**

**(Under Section 803 of the Not-For-Profit Corporation Law)**

Lauren E. Campisi, Esq.
Senior Associate General Counsel
Office of Legal Affairs
North Shore-LIJ Health System, Inc.
145 Community Drive
Great Neck, New York 11021

#19521

**CERTIFICATE OF AMENDMENT**

**OF THE**

**CERTIFICATE OF INCORPORATION**

**OF**

**NORTH SHORE UNIVERSITY HOSPITAL STERN FAMILY CENTER FOR EXTENDED CARE AND REHABILITATION**

Under Section 803 of the Not-for-Profit Corporation Law

I, THE UNDERSIGNED, Michael J. Dowling, being the President and Chief Executive Officer of North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation, do hereby certify:

1. The name of the corporation is North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation (hereinafter call the "Corporation"). The Corporation was formed under the name North Shore Hospital Nursing Home, Inc.

2. The Certificate of Incorporation was filed by the Department of State on November 24, 1967 pursuant to the New York State Membership Corporations Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and is a type B corporation under Section 201 of the Not-for-Profit Corporation Law, and shall remain a type B corporation after the filing of this Certificate of Amendment.

4. The Certificate of Incorporation is hereby amended to change the name of the Corporation to North Shore-LIJ Stern Family Center for Rehabilitation.

5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment of the Certificate of Incorporation, Article 1 of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

> I. The name of the Corporation is North Shore-LIJ Stern Family Center for Rehabilitation.

6. This amendment of the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.

7. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office

address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: North Shore-LIJ Stern Family Center for Rehabilitation, c/o North Shore-Long Island Jewish Health System, Inc., 145 Community Drive, Great Neck, New York 11021, Attention: Office of Legal Affairs.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 24 day of January, 2012, and hereby affirm, under penalties of perjury, that the statements herein are true.

/s/ Dowling

Michael J. Dowling
President and Chief Executive Officer

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 11th day of October, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of North Shore University Hospital Stern Family Center for Extended Care and Rehabilitation, dated January 24, 2012.

Division of Home & Community Based Services
Character and Competence Staff Review

| | |
|---|---|
| Name of Agency: | International Home Care Services of NY, LLC |
| Address: | Rego Park |
| County: | Queens |
| Structure: | Limited Liability Company |
| Application Number: | 1991-L |

Description of Project:

International Home Care Services of NY, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed members of International Home Care Services of NY, LLC comprise the following individuals:

Karina Elnatanova – Member, 50%
Manager, Elina Consulting Co.

Irina Elnatanova, HHA – Member, 50%
Marketing, 1st Choice Home Care Services, Inc.
Home Health Aide, Care at Home – Diocese of Brooklyn (2005-2007)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 99-32 66th Road, Unit 5G, Rego Park, New York 11374:

| | | | |
|---|---|---|---|
| Bronx | Kings | Nassau | New York |
| Queens | Richmond | | |

The applicant proposes to provide the following health care services:

| | | | |
|---|---|---|---|
| Nursing | Home Health Aide | Personal Care | Speech-Language Pathology |
| Physical Therapy | Occupational Therapy | Nutrition | Medical Social Services |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

| | |
|---|---|
| Recommendation: | Contingent Approval |
| Date: | September 11, 2012 |

Division of Home & Community Based Services
Character and Competence Staff Review

| | |
|---|---|
| Name of Agency: | Omega Care & Health Inc.<br>d/b/a Right at Home |
| Address: | Patchogue |
| County: | Suffolk |
| Structure: | For-Profit Corporation |
| Application Number: | 1943-L |

Description of Project:

Omega Care & Health Inc., d/b/a Right at Home, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Omega Care & Health Inc. has proposed to operate as a Franchisee of Right at Home Inc.,

The applicant has authorized 200 shares of stock, which are owned as follows:

Raymond Acevedo – 10 Shares
Surveyor/Contraction Layout, International Union Operating Engineers

Lilethe Acevedo – LPN,10 Share
Owner/Manager, Right at Home

The remaining 180 shares of stock remain unissued.

The Board of Directors of Omega Care & Health Inc., d/b/a Right at Home comprises the following individual:

Raymond Acevedo – President, Treasurer
(Previously Disclosed)

Lilethe Acevedo – Vice President, Secretary
(Previously Disclosed)

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 475 East Main Street, # 108, Patchogue, New York 11772

Nassau

Suffolk

The applicant proposes to provide the following health care services:

Nursing
Personal Care
Housekeeper

Home Health Aide
Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

| | |
|---|---|
| Recommendation: | Contingent Approval |
| Date: | September 11, 2012 |

Division of Home & Community Based Services
Character and Competence Staff Review

| | |
|---|---|
| Name of Agency: | Tioga County Health Department |
| Address: | Owego |
| County: | Tioga |
| Structure: | Public |
| Application Number: | 2166-L |

Description of Project:

Tioga County Health Department, a government subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant currently operates a certified home health agency (CHHA), a long term home health care program (LTHHCP) and a diagnostic and treatment center. Tioga County Health Department is requesting approval to become licensed as a licensed home care services agency to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Tioga County from an office located at:
1062 State Route 38, P.O. Box 120, Owego, New York 13827-0120.

The applicant proposes to provide the following health care services:

Nursing Medical Social Services Nutrition

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency (CHHA) and long term home health care program (LTHHCP) reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Certification and Surveillance has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

Since the applicant is a public entity, it is not subject to a character and competence review.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

| | |
|---|---|
| Recommendation: | Contingent Approval |
| Date: | August 6, 2012 |

Division of Home & Community Based Services
Character and Competence Staff Review

| | |
|---|---|
| Name of Agency: | Gotham Per Diem, Inc. |
| Address: | Bronx |
| County: | Bronx |
| Structure: | For-Profit Corporation |
| Application Number: | 1999-L |

Description of Project:

Gotham Per Diem, Inc., a for-profit corporation, requests approval for a proposed corporate restructuring of a home care services agency under Article 36 of the Public Health Law.

Gotham Per Diem, Inc., is a licensed home care services agency, and was previously approved as a home care services agency by the Public Health Council at its September 23, 1994 meeting and subsequently licensed as 9525L001.

At that time, the stock was owned by Caroline M. Barrett – 40 shares and the Charles Spear Charitable Trust – 160 shares. The sole trustee of the Charles Spear Charitable Trust is Caroline M. Berrett.

Gotham Per Diem, Inc. is seeking approval to transfer 100% of the capital stock from its present owners; Caroline M. Barrett and the Charles Spear Charitable Trust to the Gotham Per Diem Employee Stock Ownership Trust ("ESOP").

The Trustee of the ESOP Trust, to which the Company's stock will be transferred to is GreatBanc Trust Company, and independent institutional trustee of ESOPs. GreatBanc's corporate headquarters is located in Illinois.

GreatBanc's function with respect to the Plan is precisely that which it performs as a Trustee. No officer or director of GreatBanc will have direct authority over the Gotham Per Diem ESOP. As an independent Trustee, GreatBanc's functions will be limited solely to administrative and ministerial activities.

The ESOP attained its legal existence on January 1, 2010. The transfer of stock to the Trustee has not taken place. It will only occur after Public Health and Health Planning Council approval and all contingencies, if any, are satisfied.

At the closing, a total of 100,000 shares of Company common stock will be issued and outstanding. All of those shares will be transferred to the Trustee.

A Committee was formed as the governing body of the ESOP Trust. Under the terms of the Trust, the Committee, comprised of three members, is responsible for the management and direction of the ESOP Trust, in furtherance of which it is charged with making all financial, operational, investment and other decisions affecting the conduct of the business of that Trust.

The Committee, who also comprise the Board of Directors of the Company, comprises the following individuals:

Caroline M. Barrett – Chairman
President, Chief Executive Officer, Director, Principle Stockholder, Gotham Per Diem, Inc.
Sole Trustee, Charles Spear Charitable Trust

Robert N. Cooperman, Esq. – Secretary
President/Partner, Cooperman Lester Miller, LLP

James F. Galvin – Member
Controller, Gotham Per Diem, Inc.

Caroline M. Barrett is exempt from character and competence review due to the fact that she was previously approved by the Public Health Council for this operator.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for Robert N. Cooperman, Esq.

A 10 year review of the operations of the following agency was performed as part of this review:

Gotham Per Diem, Inc.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant will continue to provide the following health care services:

| | | | |
|---|---|---|---|
| Nursing | Home Health Aide | Personal Care | Medical Social Services |
| Occupational Therapy | Physical Therapy | Housekeeper | Speech-Language Pathology |
| Respiratory Therapy | Nutrition | Homemaker | |

The applicant will continue to serve the residents of the following counties from an office located at 115 East 23rd Street, New York, New York 10010:

| | | | |
|---|---|---|---|
| Bronx | Kings | New York | Queens |
| Richmond | Westchester | | |

The applicant will continue to serve the residents of the following counties from an office located at 2488 Grand Concourse, Bronx, New York 10458:

| | | | |
|---|---|---|---|
| Bronx | Kings | New York | Queens |
| Richmond | Westchester | | |

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 10, 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 11th day of October, 2012, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY: |
|---|---|
| 2169 L | Greene County Public Health Nursing Service<br>(Greene County) |
| 1991 L | International Home Care Services of NY, LLC<br>(Bronx, Queens, Kings, Richmond, Nassau and New York Counties) |
| 1943 L | Omega Care & Health Inc. d/b/a Right at Home<br>(Nassau and Suffolk Counties) |
| 2166 L | Tioga County Health Department<br>(Tioga County) |
| 1999 L | Gotham Per Diem, Inc.<br>(Bronx, Richmond, Kings, Westchester, New York and Queens Counties) |

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

# October 11, 2012

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

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

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

**Ambulatory Surgery Centers – Establish/Construct** **Exhibit #25**

| Number | Applicant/Facility | E.P.R.C. Recommendation |
|---|---|---|
| 121140 B | Endoscopy Center of Niagara (Niagara County)<br>Mr. Booth – Interest<br>Dr. Gutiérrez – Abstained at EPRC<br>Dr. Martin – Abstained at EPRC | Contingent Approval |

# Public Health and Health Planning Council

## Project # 121140-B
## Endoscopy Center of Niagara, LLC

***County:*** **Niagara (Niagara Falls)** ***Program:*** **Ambulatory Surgery Center**
***Purpose:*** **Establishment and Construction** ***Submitted:*** **March 20, 2012**

## Executive Summary

### Description

Endoscopy Center of Niagara, LLC, an existing New York State limited liability company, requests approval to establish and construct a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology procedures. The FASC will be located at 6933 Elaine Drive, Niagara Falls, and be comprised of two procedure rooms, which will accommodate the current and future needs of the community. Endoscopy Center of Niagara, LLC is a joint venture, with membership as shown below:

| | |
|---|---|
| Northtowns Venture, LLC<br>-- Class B Membership | 51.0% |
| Endoscopy Center of Western New York, LLC<br>-- Class A Membership | 49.0% |

Northtowns Venture, LLC is owned equally by both Niagara Falls Memorial Medical Center (NFMMC) and VISK, Inc (previously known as General Homecare, Inc.). VISK, Inc. is a wholly-owned subsidiary of Kaleida Health. They are a passive parent entity. Kaleida Health will provide the funding for VISK, Inc. for the project, and will be providing a subvention agreement for this funding.

Endoscopy Center of Western New York, LLC which is a class A member is comprised of 15 individuals, 11 of whom are Class A and 4 are Class B, listed below:

| Members | Interest |
|---|---|
| Christopher Bartolone, M.D. (A) | 8.3770% |
| David Garson, M.D. (A) | 8.3770% |
| Richard Kaplan, M.D. (A) | 8.3770% |
| Michael Kozower, M.D. (A) | 8.3770% |
| Yogesh Maheshwari, M.D. (A) | 8.3770% |
| Siddhartha Shah, M.D. (A) | 8.3770% |
| Raymond Tuoti, M.D. (A) | 8.3770% |
| Mr. Kenneth Hoffman (A) | 1.8324% |
| Mr. John Poisson (B) | 13.0758% |
| Ms. Karen Sablyak (B) | 13.0758% |
| Peter Bloom, M.D, (A) | 3.7923% |
| Naima Mian, D.O. (A) | 3.7923% |
| Stanley Pietrak, M.D. (A) | 3.7923% |
| Mr. Frank Principati (B) | 1.0000% |
| Mr. W. Barry Tanner (B) | 1.0000% |

The primary difference between the A and B membership are that Class A members are active in the daily operations of the facility while Class B members are not, and are involved primarily with the overall Board decisions for the facility.

In response to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area, objections were received from Mount Saint Mary's Hospital and Health Center. The Department does not find the comments submitted sufficient to warrant reversal or modification of the recommendation for five-year limited life approval.

Total project costs are estimated at $2,026,286.

### DOH Recommendation

Contingent approval, with an expiration of the operating certificate five years from the date of its issuance, should the operator not comply with the conditions of approval granted this CON.

### Need Summary

The proposed project will address the needs of the participating physicians' patients, who are currently served at Endoscopy Center of Western New York and NFMMC. It is projected that there will be 3,672 procedures performed in the year 1 and 4,159 procedures in year 3.

### Program Summary

Staff have reviewed the ten-year surveillance history of all associated facilities. The review found that any citations were properly corrected with appropriate remedial action.

### Financial Summary

Project costs will be met with $226,286 in cash and a $1,800,000 loan from Wells Fargo Bank (6 yrs. @ 6%).

| Budget: | | |
|---|---|---|
| | *Revenues:* | *$ 2,529,824* |
| | *Expenses:* | *1,865,668* |
| | *Gain/(Loss):* | *$ 664,156* |

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 with an expiration of the operating certificate five years from the date of its issuance is recommended contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA]
5. Submission of a loan commitment for the Working capital requirement that is acceptable to the Department. [BFA]
6. Submission of a loan commitment that is acceptable to the Department. [BFA]
7. Submission of a subvention agreement that is acceptable to the Department. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
9. Submission of a photocopy of an Amendment to the Article of Organization of Endo Center of Niagara, LLC, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an Amendment to the Operating Agreement of Endo Center of Niagara, LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an Administrative Services Agreement, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of an Amendment to the Articles of Organization of Endoscopy Center of Western New York, LLC, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of an Amendment to the Operating Agreement of Endoscopy Center of Western New York, LLC, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of an amendment to the Articles of Organization of Northtown Ventures, LLC, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of an amendment to the Operating Agreement of Northtown Ventures, LLC, which is acceptable to the Department. [CSL]

**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 April 1, 2012 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]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. The submission of a CON or other licensing extension application required by the Department prior to expiration date of the operating certificate issued pursuant to this CON, seeking extension of the operating certificate of the ambulatory surgery center. [PMU]

Council Action Date
**October 11, 2012.**

# Need Analysis

## Background

Endoscopy Center of Niagara, LLC (ECN) seeks to establish and construct an Article 28 diagnostic and treatment center to be certified as a single-specialty freestanding ambulatory surgery center specializing in gastroenterology procedures, to be located at 6933 Elaine Drive, Niagara Falls, 14304, in Niagara County.

## Analysis

The primary service area for this project is Southern Niagara County and Northern Erie County.

The 10 participating physicians of Endoscopy Center of Niagara (ECN) have committed to perform approximately 3,900 procedures at ECN in the first year. These procedures are currently being performed either at the Endoscopy Center of Western New York, LLC (ECWNY) or at Niagara Falls Memorial Medical Center (NFMMC).

The applicant is committed to serving all persons in need of for the procedure regardless of the source of payment; additionally, the applicant is committed to providing two (2%) percent charity care, reduced compensation or uncompensated care.

The proposed location is near the campus of the NFMMC. NFMMC and Kaleida Health will provide backup and emergency services.

The applicant has submitted an Organizational Mission Statement that identifies the populations and communities that will be served and ensures that charity care will be provided. The applicant has also submitted a statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel. Both of these statements are acceptable.

## Conclusion

This project will increase access to service for patients in Southern Niagara County and Northern Erie County.

## Recommendation

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

# Programmatic Analysis

## Background

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

| **Proposed Operator** | **Endoscopy Center of Niagara, LLC** |
|---|---|
| Site Address | 6933 Elaine Drive, Niagara Falls |
| Surgical Specialties | Gastroenterology |
| Operating Rooms | 0 |
| Procedure Rooms | 2 |
| Hours of Operation | Monday through Friday from 7:00 am to 5:00 pm (Extended as necessary to accommodate patient needs). |
| Staffing (1st Year / 3rd Year) | 8.75 FTEs / 9.25 FTEs |
| Medical Director(s) | Yogesh Maheshwari / Raymond Tuoti |
| Emergency, In-Patient and Backup Support Services Agreement and Distance | Niagara Falls Memorial Medical Center<br>6.1 miles and 18 minutes |

| | |
|---|---|
| On-call service | Access to the facility's on-call physician during hours when the facility is closed. |

Character and Competence
The members of the LLC are:

Class A Member

| | |
|---|---|
| **Endoscopy Center of Western NY, LLC** | **49%** |
| Christopher Bartolone, MD | Manager |
| David Garson, MD | |
| Richard Kaplan, MD | |
| Michael Kozower, MD | |
| Yogesh Maheshwari, MD | President / Manager |
| Siddhartha Shah, MD | |
| Raymond Tuoti, MD | |
| Kenneth Hoffman | Treasurer |
| John Poisson | Manager |
| Karen Sablyak | |
| Peter Bloom, MD | |
| Naima Mian, DO | |
| Frank Principati | |
| W. Barry Tanner | |

Class B Member

| | |
|---|---|
| **Northtowns Venture, LLC** | **51%** |
| Niagara Falls Memorial Medical Center (50%) | |
| Sheila Kee | Vice President / Manager |
| Joseph Ruffalo | |
| VISK, Inc. (50%) | |
| Donald Boyd | Secretary / Manager |
| John Kessler | |
| Judith Baumgartner | |

Endoscopy Center of Western New York, LLC includes practicing physicians as well as members of Physician Endoscopy, LLC (PELL). PELL is a national provider of administrative and consulting services to gastroenterological practices. Additionally, these PELL members have been approved in New York State as members of several Article 28 ambulatory surgery centers.

The members of Northtowns Ventures, LLC are Niagara Falls Memorial Medical Center and VISK, Inc. (whose sole passive member is Kaleida Health). The Board of Managers of Northtowns is comprised of current board members or executive staff of Niagara Falls, Kaleida, and Visiting Nurse Association of WNY.

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.

- In 2005 Kaleida Health was fined $4,000 based on the investigation at Millard Fillmore Suburban Hospital of an occurrence where a patient was admitted for left sided hernia repair. Although the consent and marking indicated

the left side, the operation proceeded on the right side. The error was not noted until the surgeon was dictating post op notes and others were closing the wound. The operation resumed at that point and the correct side was operated on.

- In 2006 Kaleida Health was fined $10,000 based on the investigation of care rendered in the Millard Fillmore Suburban Hospital ER. It was determined that the patient received inadequate care including testing ordered but not done. Upon readmission, restraints were ordered without physical examination of the patient who deteriorated and died.
- In 2007 Kaleida Health was fined $24,000 based on the investigation of the care rendered to two teenagers in Women & Children's Hospital ER. Due to delayed treatment and/or inappropriate treatment, both resulted in deaths.
- In 2005 Niagara Falls Memorial Medical Center was fined $12,000 based on the investigation of an occurrence reported by the facility in which a patient who had gastric bypass surgery was readmitted with significant symptoms, but there was a delay in diagnosing peritonitis, and the patient died.
- In 2006 Niagara Falls Memorial Medical Center was fined $10,000 based on the investigation of a complaint regarding a baby death. A pregnant patient arrived at the hospital with prematurely ruptured membranes. The baby was delivered with severe complications, was transferred and died. It was determined that the baby received inadequate care at the facility and the transfer to a higher level of care was delayed.
- Augusta Endoscopy Center, LLC located in Georgia has not yet filed three annual surveys in accordance with Georgia law. According to the Georgia Department of Community Health, the facility has not been brought to enforcement, and the facility disputes that the surveys are required by law. The issue is in the hearing process.

### Compliance with Applicable Codes, Rules and Regulations

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

### Recommendation

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

## Financial Analysis

### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, the terms are summarized below:

| | |
|---|---|
| *Facility:* | Endo Center of Niagara, LLC |
| *Contractor:* | Endoscopy Center of Western New York, L.L.C. |
| *Services Provided:* | Institute cost containment policies and procedures regarding staffing, supplies and capital and other expenditures, assist with establishment of fee schedules and advise company of managed care contracting opportunities, implement financial accounting and management reporting systems approved by the company, assist company in meeting the following mutual goals, (1) provide a consistent level of quality services to physicians and patients of facility, (2) operate company on a sound financial basis, (3) operate company at appropriate levels of staffing and (4) develop and recommend departmental policies, systems and procedures to achieve an efficient operation governing company. Develop an Annual Budget; assist in the development and implementation of an organization structure and written bylaws, policies, procedures and protocols to facilitate the efficient and legal operation of the company. The development and implementation of an organizational structure and written bylaws, policies, procedures and protocols to facilitate the efficient and legal formation and operation of the medical staff. Including |

| | |
|---|---|
| | the development and implementation of medical staff committees and credentialing criteria subject to approval of the board of managers. Development and recommendation of financial procedures and controls to achieve orderly operation of Company and to reasonably safeguard the assets of the Company. Including the establishment of accounting procedures, reporting methods, fee schedules, cost reporting, asset management, billing procedures and credit and collection procedures, all done upon the direction of the company. Assist in developing and providing written monthly financial report packages, including itemized operating expense reports. Provide operational assistance in order to assist the company in complying with governmental regulations. Additional operational services include: Operational reviews, designing and recommending control procedures to ensure that charges for services are captured efficiently and accurately, recommend preadmission and scheduling protocols and pre-certification process. Assist in maintaining the physical assets of the company, provide monthly statistical information, establish systems and controls for purchasing inventory and distribution and charge control functions. Housekeeping and maintenance services, accreditation and committee operations. Monitor policies and procedures; obtain all relevant insurance for the company. Provide assistance with normal daily operations of the facility. |
| *Term:* | 6 years with (3) additional 6 year terms |
| *Fee:* | Annual Fee $105,000 Fee will increase 2% per year after the first year |

Staff notes that the arrangement proposed in the subject application between the facility and Endoscopy Center of Western New York, LLC, in which all of the owners of ECWNY are also owners of the facility, appears to constitute a representative governance structure, and appear to be in compliance with the principles set forth by the Department in that regard.

## Lease Rental Agreement

The applicant will lease approximately 5,900 square feet in a to be built building at 6933 Elaine Drive, Niagara Falls, NY(Niagara County), under the terms of the draft lease agreement summarized below:

| | |
|---|---|
| *Lessor:* | 6933 Elaine Drive, LLC |
| *Lessee:* | Endo Center of Niagara, LLC |
| *Term:* | 10 years with 3 (5) year renewal terms |
| *Rental:* | $129,800 Per Year ($22.00 per sq.ft.) $10,816.67 per month. With a 3% annual increase in the current years rent. |
| *Provisions:* | Triple Net Lease |

The applicant has indicated that the lease arrangement will be an arms length lease arrangement. However, several of the proposed members of Endo Center of Niagara, LLC, have ownership interests in 6933 Elaine Drive, LLC. Therefore, the applicant has provided two letters of rent reasonableness from licensed Realtors to show that this is an arms length lease, and that the above stated terms are within the current market rate for the area.

## Total Project Cost and Financing

Total project costs for new construction and movable equipment is estimated at $2,026,286, itemized as follows:

| | |
|---|---|
| New Construction | $924,120 |
| Design Contingency | 92,412 |
| Construction Contingency | 46,206 |
| Architectural/Engineering Fees | 73,930 |
| Other Fees (consultant fees) | 50,000 |
| Movable Equipment | 766,545 |
| Financing Costs | 18,000 |
| Interim Interest Expense | 42,000 |
| Application Fee | 2,000 |
| Additional Processing Fee | 11,073 |

| | |
|---|---|
| Total Project Cost | $2,026,286 |

Project costs are based on an October 1, 2012 construction start date and a 6 month construction period.

The applicant's financing plan appears as follows:

| | |
|---|---|
| Equity | $ 226,286 |
| Wells Fargo Loan 6% for 6 Years | 1,800,000 |

## Operating Budget

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

| | Year One | Year Three |
|---|---|---|
| Revenues: | $2,201,553 | $2,529,824 |
| Expenses: | | |
| Operating | $1,461,624 | $1,402,744 |
| Interest | 136,850 | 96,483 |
| Depreciation and Rent | 357,099 | 366,441 |
| Total Expenses | $1,955,573 | $1,865,668 |
| Net Income | $245,980 | $664,156 |
| Utilization: (Visit) | 3,672 | 4,159 |
| Cost Per Visit | $532.56 | $448.59 |

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

| | Year 1 | Year 3 |
|---|---|---|
| Commercial Fee-for-Service | 12.96% | 12.45% |
| Commercial Managed Care | 40.90% | 41.48% |
| Medicare Fee-for-Service | 32.92% | 32.15% |
| Medicare Managed Care | 6.29% | 7.09% |
| Medicaid Fee-for-Service | 1.63% | 1.42% |
| Medicaid Managed Care | 3.30% | 3.41% |
| Charity Care | 2.00% | 2.00% |

Expense assumptions are based on the experience of the participating physicians in providing healthcare services through a private practice as well as the projections and experience of other freestanding ambulatory surgery centers in New York State. Utilization for the first year and third years of operation is based on the participating physicians' current caseload with a slight decrease for year one due to the applicant understands of typical start-up issues with a new FASC.

## Capability and Feasibility

The initiation of operations as a financially viable entity will be provided through $226,286 in cash equity by the proposed member with the remaining $1,800,000 for the project coming from a loan from Wells Fargo at the above stated rate.

Presented as BFA Attachments A, B and C are the financial statements for Niagara Falls Memorial Medical Center, Visk, Inc. and Endoscopy Center of Western New York, LLC (ECWNY), respectively, which indicates the availability of sufficient funds for the stated levels of equity.

Working capital requirements, estimated at $310,945 appear reasonable based on two months of third year expenses. The facility will provide $155,945 in cash equity for this project and will borrow the remaining $155,000 from Wells

Fargo Bank with a 5 year term and a 6% interest rate. A letter of interest has been supplied by Wells Fargo Bank. Presented as BFA Attachments A, B and C are the financial statements for Niagara Falls Memorial Medical Center, Visk, Inc. and Endoscopy Center of Western New York, LLC (ECWNY), respectively, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates positive member's equity position of $382,231.

The submitted budget indicates a net income of $245,890 and $664,156 would be maintained during the first and third years of operation, respectively. Budgeted net income appears reasonable.

As shown on BFA Attachment A, The certified financial summary for Niagara Falls Memorial Medical Center had an average negative working capital position and average positive net asset position, and generated an average net income of $2,614,811 during the period 2008 through 2010. The 2008 loss was caused by issues with the overall financial conditions of the medical center (pension liability adjustment) and the operations of the medical center and the delivery of patient care. In 2010, the medical center implemented a plan to correct and improve the financial conditions and operations of the medical center. This plan focused on 6 key objectives: Expand primary care, strengthen outpatient services, reduce operating costs, enhance patient revenues, increase patient safety and transform the delivery of patient care. This can be seen in the interim 2011 financial statements for the facility, shown as BFA Attachment B.

As shown on BFA Attachment B, The interim financial summary for Niagara Falls Memorial Medical Center had an average negative working capital position and average positive net asset position, and generated an average net income of $4,385,288 for the period January 1, 2011 through October 31, 2011.

As shown on BFA Attachment C, The certified financial summary for Visk, Inc had average positive working capital and net asset positions, and generated an average net income of $22,652 for 2011. The facility however does not have liquid resources to cover their portion of the project cost, but will be receiving the necessary funds through a subvention agreement from Kaleida Health.

As shown on BFA Attachment D, The interim financial summary for Visk, Inc. had average positive working capital and net asset positions, and generated an average net loss of $7,163 for the period January 1, 2012 through August 31, 2012. The loss was due to minor administrative expenses incurred by the entity due to the fact that it has not been operational for several years. The loss will be covered by the passive parent entity Kaleida Health, but it appears that as a result of this project, the facility will experience a net operating income at the end of the year.

As shown on BFA Attachment E, The certified financial summary for Kaleida Health had average positive working capital and net asset positions, and generated an average net income of $39,676,000 during the period 2009 through 2010.

As shown on BFA Attachment F, The interim financial summary for Kaleida Health had average positive working capital and net asset positions, and generated an average net loss of $11,567,000 for the period January 1, 2011 through November 30, 2011.The 2011 loss was caused by the wind down of one of the tertiary care hospitals, Millard Fillmore Gates, which experienced significant losses in its final year of operations which was 2011 in which the services were being transferred from Millard Fillmore to Buffalo General Hospital and Gates Vascular Institute. The transition and closure was completed in the first quarter of 2012. The facility has been able to achieve positive financial results since the closure.

As shown on BFA Attachment G the certified financial summary for Endoscopy Center of Western New York, LLC (ECWNY), had average positive working capital and net asset positions, and generated an average net income of $1,455,336 during the period 2009 through 2011.

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 | Certified Financial Summary for Niagara Falls Memorial Medical Center 2008-2010 |
| BFA Attachment B | Interim Financial Summary for Niagara Falls Memorial Medical Center January 2011-October 2011 |
| BFA Attachment C | Certified Financial Summary for Visk, Inc. |
| BFA Attachment D | Interim Financial Summary for Visk, Inc. |
| BFA Attachment E | Certified Financial Summary for Kaleida Health 2009-2010 |
| BFA Attachment F | Interim Financial Summary for Kaleida Health January 2011-November 2011 |
| BFA Attachment G | Financial Summary for Endoscopy Center of Western New York, LLC (ECWNY) |
| BFA Attachment H | Pro-forma Balance Sheet of Endoscopy Center of Niagara, LLC |
| BHFP Attachment | Map |

## Supplemental Information

Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** Niagara Falls Memorial Medical Center
621 Tenth Street
Niagara Falls, New York 1214302

No response.

**Facility:** Kenmore Mercy Hospital
2950 Elmwood Avenue
Kenmore, New York 14217

No response.

**Facility:** Mount Saint Mary's Hospital
and Health Center
5300 Military Road
Lewiston, New York 14092

Mount Saint Mary's objects to the application on the belief that the applicant physicians who perform endoscopy procedures at the Mount Saint Mary's would transfer those cases to the proposed ASC. This would represent a loss of 65 percent of the hospital's current endoscopy patients, with an associated annual loss in net patient services revenue of $2.1 million. This estimate does not include the anticipated revenue increases from the hospital's recent expansion of its gastroenterology laboratory from two procedure rooms to three, nor the $423,000 in costs associated with that expansion. The hospital provided no information on the impact these losses would have on its community-oriented services.

Utilization at Mount St. Mary's Hospital and Health Center:

| Current Gastro Center Use | Endoscopy Cases | | Endoscopy Cases by Applicant Physicians | Reserved Gastro. Center Time for Applicant Physicians |
|---|---|---|---|---|
| | **Ambulatory** | **Inpatient** | | |
| 60% | 3,600 | 400 | 2,331 | NA |

In 2009, Mount Saint Mary's experienced an operating gain of $2.2 million on total operating revenues of $104.9 million. In 2010, the hospital had a loss of $867,000 on operating revenues of $105.9 million. The hospital's current assets in 2009 were $32.2 million and current liabilities were $15.5 million, for a working capital ratio of 2.1 to 1.0. In 2010, current assets were $33.0 million and current liabilities $14.5 million, for a working capital ratio of 2.3 to 1.0. Mount Saint Mary's reports that in 2010, the hospital had bed debt of $1.1 million and provided charity care valued at $1.6 million. In 2011, the hospital experienced $2.3 million in bad debt and provided $1.8 million in charity care.

## Supplemental Information from Applicant

- Need and Sources of Cases

The applicant states that the utilization projected for the proposed ASC is based on the current caseload of the 10 participating physicians. All of the projected procedures are currently being performed at the Endoscopy Center of Western New York (ECWNY), a certified Article 28 ASC, or at Niagara Falls Memorial Medical Center. The applicant also cites the area's aging population as a source of cases, including an increase in the 45+ age group, which is the primary service group for ambulatory surgery. The applicant also expects that the facility's direct involvement and support of Niagara Falls Memorial Medical Center and Kaleida Health, together with its control by the member physicians who have practices in the local community, will result in greater convenience and efficiency for patients and physicians and encourage utilization of the proposed ASC.

- Office-Based Cases

The applicant states that none of the projected procedures for the proposed ASC are currently performed in an office setting. As noted, all of the projected procedures are currently performed with at ECWNY or at Niagara Falls Memorial Medical Center. The applicant states that none of the projected procedures will migrate to the ASC from any hospital other than Niagara Falls Memorial Medical Center.

- Staff Recruitment and Retention

The applicant states that initial recruitment will be of selected staff currently employed by the member physicians in their private practices, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

OHSM Comment

The comments from Mount Saint Mary's objecting to the ASC are predicated on the assumption that the ASC applicant physicians who currently practice at the hospital will transfer their endoscopy cases in their entirety to the proposed ASC. The Department notes that this assumption is completely at odds with the applicant's clear and unequivocal statement that none of the procedures projected for the ASC will migrate to the facility from any hospital other than Niagara Falls Memorial Medical Center. This assertion is also consistent with the narrative in the applicant's CON submission describing the proposed ASC's primary service area as northern Erie County and southern Niagara County exclusive of Lewiston, where Mount Saint Mary's is located. In view of these statements, the Department does not find the comments from Mount Saint Mary's sufficient to consider reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

# RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 11th day of October, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty ambulatory surgery center specializing in gastroenterology procedures, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

| NUMBER: | FACILITY/APPLICANT: |
|---|---|
| 121140 B | Endoscopy Center of Niagara |

APPROVAL CONTINGENT UPON:

**Approval with an expiration of the operating certificate five years from the date of its issuance is recommended contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports shall include:

    - Data showing actual utilization including procedures;
    - Data showing breakdown of visits by payor source;
    - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    - Data showing number of emergency transfers to a hospital;
    - Data showing percentage of charity care provided, and
    - Number of nosocomial infections recorded during the year in question. [RNR]

3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA]
5. Submission of a loan commitment for the Working capital requirement that is acceptable to the Department. [BFA]
6. Submission of a loan commitment that is acceptable to the Department. [BFA]
7. Submission of a subvention agreement that is acceptable to the Department. [BFA]
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
9. Submission of a photocopy of an Amendment to the Article of Organization of Endo Center of Niagara, LLC, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of an Amendment to the Operating Agreement of Endo Center of Niagara, LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of an Administrative Services Agreement, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of an Amendment to the Articles of Organization of Endoscopy Center of Western New York, LLC, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of an Amendment to the Operating Agreement of Endoscopy Center of Western New York, LLC, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of an amendment to the Articles of Organization of Northtown Ventures, LLC, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of an amendment to the Operating Agreement of Northtown Ventures, LLC, which is acceptable to the Department. [CSL]

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 April 1, 2012 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]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. The submission of a CON or other licensing extension application required by the Department prior to expiration date of the operating certificate issued pursuant to this CON, seeking extension of the operating certificate of the ambulatory surgery center. [PMU]

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

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

# October 11, 2012

**REGULATION**

**Report of the Committee on Codes, Regulations and Legislation** **Exhibit #26**

Angel Gutiérrez, M.D., Chair

**For Emergency Adoption**

Subpart 86-2 of Title 10 NYCRR – Sprinkler Systems

Part 9 of Title 10 NYCRR – Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited

**For Information**

Part 9 of Title 10 NYCRR – Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited

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.

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

## REGULATORY FLEXIBILITY ANALYSIS
## FOR
## SMALL BUSINESSES AND LOCAL GOVERNMENTS

**Effect of Rule:**

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

This rule will have no direct effect on local governments.

**Compliance Requirements:**

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

**Professional Services:**

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

**Compliance Costs:**

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

**Economic and Technological Feasibility:**

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

**Minimizing Adverse Impact:**

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

**Small Business and Local Government Participation:**

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

## RURAL AREA FLEXIBILITY ANALYSIS

**Effect on Rural Areas:**

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

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

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

| | | |
|---|---|---|
| Albany | Erie | Oneida |
| Broome | Monroe | Onondaga |
| Dutchess | Niagara | Orange |

**Compliance Requirements:**

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

**Professional Services:**

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

**Compliance Costs:**

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

**Minimizing Adverse Impact:**

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

**Rural Area Participation:**

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

## JOB IMPACT STATEMENT

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

## EMERGENCY JUSTIFICATION

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

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to add a new Part 9, to be effective upon filing on August 7, 2012 with the Department of State.

A new Part 9 is added to read as follows:

Part 9

Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited

Sec.



§ 9.1 Definitions.

(a) Synthetic Phenethylamine means any of the following chemical compounds, that are not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and are not approved by the federal Food and Drug Administration ("FDA"):

3,4-Methylenedioxymethcathinone (Methylone);

4-Methoxymethcathinone;

3-Fluoromethcathinone;

4-Fluoromethcathinone;

Ethylpropion (Ethcathinone);

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)

2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)

2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P); and

any compound that has a chemical structure that is substantially similar to these compounds.

(b) Synthetic Cannabinoid means any chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and not approved by the federal Food and Drug Administration (FDA), and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

i) Naphthoylindoles. Any compound containing a 3-(1-Naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH 015, JWH 018, JWH 019, JWH 073, JWH 081, JWH 122, JWH 200, JWH 210, JWH 398, AM 2201, and WIN 55 212).

ii) Naphthylmethylindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH-175, and JWH-184).

iii) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH 307).

iv) Naphthylmethylindenes. Any compound containing a naphthylmethyl indenes structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-

morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH-176).

v) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: RCS-8 (SR-18), JWH 250, JWH 203, JWH-251, and JWH-302).

vi) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: CP 47,497 (and homologues (analogs)), cannabicyclohexanol, and CP 55,940).

vii) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methy1-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: AM 694, Pravadoline (WIN 48,098), RCS 4, and AM-679).

viii) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-napthalenylmethanone. (Other names in this structural class include but are not limited to: WIN 55,212-2).

ix) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol. (Other names in this structural class include but are not limited to: HU-210).

x) (6aS, 10aS)-9-(hydrxymethyl)-6,6-demethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo{c}chromen-l-ol (Dezanabinol or HU-211).

xi) Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AM-1248).

xii) Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug.

(c) Possession means to have physical possession or otherwise to exercise dominion or control over synthetic phenethylamine or synthetic cannabinoid, or a product containing the same. For purposes of this definition, among other circumstances not limited to these examples, the following individuals and/or entities shall be deemed to possess synthetic phenethylamine or synthetic cannabinoid, or a product containing the same:

(1) any individual or entity that has an ownership interest in a retail, distribution or manufacturing establishment that possesses, distributes, sells or offers for sale a synthetic phenethylamine or synthetic cannabinoid, or a product containing the same; and

(2) any clerk, cashier or other employee or staff of a retail establishment, which establishment possesses, distributes, sells or offers for sale a synthetic phenethylamine or synthetic cannabinoid, or a product containing the same, who interacts with customers or other members of the public.

§ 9.2 Possession, Manufacture, Distribution, Sale or Offer of Sale of Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited. It shall be unlawful for any individual or entity to possess, manufacture, distribute, sell or offer to sell any synthetic phenethylamine or synthetic cannabinoid or product containing the same, except as expressly exempted by this Part.

§ 9.3 Exemptions. The provisions of this Part prohibiting the possession of any synthetic phenethylamine or synthetic cannabinoid, or product containing the same shall not apply to:

(a) public officers or their employees in the lawful performance of their official duties requiring possession of synthetic phenethylamines or synthetic cannabinoids, or products containing the same;

(b) temporary or incidental possession by employees or agents of persons lawfully entitled to possession, or persons whose possession is for the purpose of aiding public officers in performing their official duties;

(c) a person in the employ of the United States government or of any state, territory, district, county, municipal or insular government, obtaining or possessing synthetic phenethylamines or

synthetic cannabinoids, or products containing the same, by reason of his or her official duties;

(d) common carriers or warehousemen, while engaged in lawfully transporting or storing synthetic phenethylamines or synthetic cannabinoids, or products containing the same, or to any employee of the same within the scope of his or her employment;

(e) laboratories with a federal Drug Enforcement Administration ("DEA") license to purchase and use schedule I controlled substances for research and/or analytical testing; and

(f) manufacturers that are registered with the DEA to synthesize and distribute controlled substances.

§ 9.4 Penalties. A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each packet, individual container or other separate unit of synthetic phenethylamine or synthetic cannabinoid, or product containing the same, that is possessed, manufactured, distributed, sold, or offered for sale, shall constitute a separate violation under this Part.

§ 9.5 Commissioner's Order. The Commissioner has authority to issue orders to address dangers to the health of the people as set forth in Public Health Law § 16. The Commissioner can exercise such authority to address a violation of this Part if, in his or her opinion, such a danger exists. It is hereby recognized that, dependent upon the opinion and discretion of the Commissioner as applied to each circumstance, he or she may issue such an order in the event of a continuing or repeat violation of this Part at or by a retail establishment when the entity and/or its owner(s) or employee(s) knew or should have known of the violation. As determined by the Commissioner, such an order could require the closure of the retail establishment, among other

relief. Although not required, this section serves as notice that such an order could be issued. The circumstances and relief described in this notice are only examples and in no way bind the Commissioner or limit his or her authority to issue such an order, or the relief set forth in such an order, under any circumstance whatsoever.

§ 9.6 Severability. If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

## Regulatory Impact Statement

**Statutory Authority:**

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

**Legislative Objectives:**

This rulemaking is in accordance with the legislative objective of PHL Section 225(4) authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Specifically, this regulation prohibits the possession, manufacture, distribution, sale or offer of sale of substances and products containing synthetic phenethylamines and synthetic cannabinoids, chemical compounds which are causing serious adverse health outcomes and particularly affecting New York State teenagers and young adults.

**Needs and Benefits:**

This regulation pertains to synthetic phenethylamines that are commonly packaged and marketed online, in convenience stores, gas stations and smoke shops as “bath salts,” plant food and other ordinary household goods, and which are not approved by the federal Food and Drug Administration (“FDA”). The compounds stimulate the body’s central nervous system, and cause effects similar to those caused by cocaine and amphetamines, including but not limited to increased heart rate and blood pressure, hallucinations, paranoia, suicidal thoughts, violent behavior, nausea and vomiting. Some synthetic phenethylamines are also commonly referred to

as “designer drugs” because they are specifically synthesized with a similar, but slightly modified structure of a Schedule I controlled substance in order to avoid existing drug laws, and can be continually chemically modified to avoid legal repercussions, while maintaining their intended effects and usages. Certain synthetic phenethylamines are prevalent drugs of abuse.

From January 2011 through April 2012, poison control centers throughout the United States have received over 7,000 calls regarding instances of poisoning from products containing synthetic phenethylamines, including instances resulting in accidental death and suicide. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning, and many additional New York residents are likely to have been harmed as a result of using products containing synthetic phenethylamines. In addition, between January 1, 2011 and August 2, 2012, there were approximately 230 emergency department visits in New York (not including New York City) in which effects from consuming a product with synthetic phenethylamines or “bath salts” were the patient’s chief complaint. One hundred twenty of these visits occurred in June and July, 2012, indicating that usage of these substances is increasing at a remarkable rate.

Poison control center experts, who have first-hand knowledge of the devastation that synthetic phenethylamines wreak on individuals and their families, say these substances are among the worst they have ever seen. They report that people high on these compounds can get very agitated and violent, exhibit psychosis and severe behavior changes, and have harmed themselves and others. Some have been admitted to psychiatric hospitals and have experienced continued neurological and psychological effects.

“Synthetic cannabinoids” encompass a wide variety of chemicals that are synthesized and marketed to mimic the action of the cannabinoid 9-tetrahydrocannabinol (THC). Synthetic

cannabinoids have been linked to severe adverse reactions, including death and acute renal failure, and reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness).

Synthetic cannabinoids are frequently applied to plant materials and then packaged and marketed online and in convenience stores, gas stations and smoke shops as incense, herbal mixtures or potpourri. They often carry a "not for human consumption" label, and are not approved for medical use in the United States.

Products containing synthetic cannabinoids are, in actuality, produced, distributed, marketed and sold, as a supposed "legal alternative" to marijuana and for the purpose of being consumed by an individual, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse, especially among teens and young adults. Calls to New York State Poison Control centers relating to the consumption of synthetic cannabinoids have increased dramatically, with a total of 105 reported incidents of exposure to these substances since 2011, compared to four reported instances in 2009 and 2010. Over half of the calls to the Upstate Poison Control Center this year involved children under the age of 19, which is consistent with the results of a 2011 "Monitoring the Future" national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors. Nationally, poison control centers have received over 10,000 calls relating to exposure to these substances from January 2011 to June 2012. Calls received by poison control centers generally reflect only a small percentage of actual

instances of poisoning. Therefore, it is clear that many additional New York residents have been harmed as a result of using products containing synthetic cannabinoids.

On May 20, 2011, pursuant to Public Health Law § 16, the Commissioner issued an Order for Summary Action that, among other things, prohibited the sale or distribution of bath salts. Thereafter, on March 28, 2012, pursuant to Public Health Law § 16, the Commissioner issued an Order for Summary Action that, among other things, prohibited the sale or distribution of synthetic cannabinoids. However, abuse of synthetic phenethylamines and synthetic cannabinoids has escalated in New York State, and stronger measures therefore are required to protect the public from the dangerous effects of these substances.

**Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law. Costs will be offset further by a reduction in occasions needing emergency response and/or law enforcement involvement, as well as a reduction in health care and other State and local resources currently being used to respond to and address the negative effects of usage of the substances at issue.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with

the SSC through a local sanitary code. PHL § 228. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including this new Part, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1) (e).

**Paperwork:**

The regulation imposes no new reporting or filing requirements.

**Duplication:**

On May 20, 2011, the Commissioner of Health of the State of New York issued an Order for Summary Action banning the sale and distribution of certain products containing synthetic cathinone (a category of phenethylamines). On March 28, 2012, the Commissioner of Health of the State of New York issued an Order for Summary Action banning the sale and distribution of products containing synthetic cannabinoids. These Commissioner's Orders, unlike this regulation, are not enforceable by local governments or criminal authorities, and the sole enforcement mechanism for violations of the Order is a civil enforcement proceeding for an injunction and civil penalties through the State Attorney General. In addition, the Commissioner's Orders do not prohibit possession or manufacture of some synthetic phenethylamines and/or synthetic cannabinoids. Further, the Commissioner's Orders are only binding on and enforceable against those individuals and entities who received personal service of the Commissioner's Orders.

On July 9, 2012 President Barack Obama signed a Bill (S.3187) into law which, in relevant part, enacted the federal Synthetic Drug Abuse Prevention Act of 2012. The law banned the sale and distribution of products containing most of the types of synthetic phenethylamines and synthetic cannabinoids identified in this regulation by placing them on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This

regulation does not conflict because the federal law does not provide for state and local authority enforcement.

**Alternatives:**

The alternative of continued sole reliance on the May 20, 2011 and March 28, 2012 Commissioner's Orders was considered. Promulgating this regulation, however, was decided upon in order to provide enhanced enforcement authority and regulatory authority for state and local governments to more effectively address this emergent and expanding public health threat.

**Federal Standards:**

The New York regulation is broader than the recent federal Synthetic Drug Abuse Prevention Act of 2012 in that it covers additional classes of stimulant compounds. Further, it anticipates future synthesis of stimulant compounds not yet developed, specifically cannabinoid receptor agonists. Analysis methodologies will need to be developed as additional related compounds are synthesized.

**Compliance Schedule:**

Regulated parties should be able to comply with these regulations effective upon filing with the Secretary of State.

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## Regulatory Flexibility Analysis for Small Business and Local Governments

**Effect of Rule:**

The rule will affect only the small businesses which are engaged in selling products containing certain harmful substances known as synthetic phenethylamines and synthetic cannabinoids. At this time, it is not possible to determine the number of small businesses that sell these products. However, in 2011 and 2012, Commissioner's Orders were issued banning certain synthetic phenethylamines and synthetic cannabinoids and resulted in approximately 7,000 establishments being served with one or both of such Orders by public health authorities.

This regulation affects local governments by establishing a minimum standard regarding the possession, manufacture, distribution, sale or offer of sale of synthetic phenethylamines and synthetic cannabinoids. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including this new Part, utilizing any civil and criminal remedies that may be available. PHL §§ 228, 229, 309(1)(f) and 324(e).

Pursuant to PHL § 228, the State Sanitary Code establishes a minimum standard for health and sanitation. Under that same authority, local governments are empowered to establish a local sanitary code that is more restrictive than the State Sanitary Code. Many local governments already have local sanitary codes that are more restrictive than the State Sanitary Code.

**Compliance Requirements:**

Small businesses must comply by not engaging in any possession, manufacturing, distribution, sale or offer of sale of synthetic phenethylamines and synthetic cannabinoids.

Local governments must comply by enforcing the State Sanitary Code. Local boards of health may impose civil penalties for a violation of this regulation of up to $2,000 per violation,

pursuant to PHL § 309(1)(f). Pursuant to PHL § 229, local law enforcement may seek criminal penalties for a first offense of up to $250 and 15 days in prison, and for each subsequent offense up to $500 and 15 days in prison.

**Professional Services:**

Small businesses will need no additional professional services to comply.

Local governments, in certain instances where local governments enforce, will need to secure laboratory services for testing of substances.

**Compliance Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

Any enforcement costs incurred by State and local governments cannot be predicted, but are likely to be offset by fines and penalties imposed pursuant to Public Health Law. Moreover, any such costs will be further offset by a reduction in emergency responder, law enforcement, health care and other State and local resources currently being used to respond to and address the negative effects of usage of the prohibited substances.

**Economic and Technological Feasibility:**

Although there will be an impact on small businesses that sell these products, the prohibition is justified by the extremely dangerous nature of these products.

Although the costs of local enforcement are not precisely known at this time, the benefits to public health are anticipated to outweigh any such costs. Regarding technical feasibility, as new designer drugs become available, new tests will need to be developed.

This regulation is necessary to protect public health. It is as narrowly tailored as possible

while still addressing the public health threat.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local government, e.g. consultation, coordination and providing information and updates on its website.

**Small Business and Local Government Participation:**

Local governments are aware of and have been involved in notifying certain small businesses regarding prior Commissioner's Orders on this same matter.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by these substances, the risk that some small businesses will not comply with regulations and continue to make or sell or distribute the substance justifies the absence of a cure period.

## Rural Area Flexibility Analysis

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

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

## Job Impact Statement

**Nature of the Impact:**

The Department of Health does not expect there to be a positive or negative impact on jobs or employment opportunities.

**Categories and Numbers Affected:**

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

**Regions of Adverse Impact:**

The Department anticipates no negative impact on jobs or employments opportunities in any particular region of the state.

**Minimizing Adverse Impact:**

Not applicable.

**Emergency Justification**

The following chemical compounds are commonly packaged and marketed online, in convenience stores, gas stations and smoke shops as “bath salts,” plant food and other ordinary household goods, and which are not approved by the federal Food and Drug Administration (FDA):

3,4-Methylenedioxymethcathinone (Methylone);

4-Methoxymethcathinone;

3-Fluoromethcathinone;

4-Fluoromethcathinone;

Ethylpropion (Ethcathinone);

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E);

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D);

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C);

2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I);

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2);

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4);

2-(2,5-Dimethoxyphenyl)ethanamine (2C–H);

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N);

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P); and

any compound that has a chemical structure that is substantially similar to these compound.

Those compounds, hereinafter referred to collectively as “synthetic phenethylamines,” and which are commonly referred to as “designer drugs” because they are specifically

synthesized with a similar, but slightly modified structure of a Schedule I controlled substance in order to avoid existing drug laws, can be continually chemically modified to avoid legal repercussions, while maintaining their intended effects and usages.

Synthetic phenethylamines are prevalent drugs of abuse. From January 2011 through April 2012, poison control centers throughout the United States have received over 7,000 of calls regarding instances of poisoning from products containing synthetic phenethylamines, including instances resulting in accidental death and suicide. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning and, and many additional New York residents are likely to have been harmed as a result of using products containing synthetic phenethylamines. In addition, between January 1, 2011 and August 2, 2012, there were approximately 230 emergency department visits in New York (not including New York City) in which effects from consuming a product with synthetic phenethylamines or "bath salts" were the patient's chief complaint. One hundred twenty of these visits occurred in June and July, 2012, indicating that usage of these substances are increasing at a remarkable rate.

Poison center experts, who have first-hand knowledge of the devastation that synthetic phenethylamines wreak on individuals and their families, say these substances are among the worst they have ever seen. They report that people high on these compounds can get very agitated and violent, exhibit psychosis and severe behavior changes, and have harmed themselves and others. Some have been admitted to psychiatric hospitals and have experienced continued neurological and psychological effects.

"Synthetic cannabinoids" encompass a wide variety of chemicals that are synthesized and marketed to mimic the action of the cannabinoid 9-tetrahydrocannabinol (THC). Synthetic cannabinoids have been linked to severe adverse reactions, including death and acute renal

failure, and reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness).

Synthetic cannabinoids are frequently applied to plant materials and then packaged and marketed online, and in convenience stores, gas stations and smoke shops as incense, herbal mixtures or potpourri, and often carry a "not for human consumption" label, and are not approved for medical use in the United States.

Products containing synthetic cannabinoids are, in actuality, produced, distributed, marketed and sold, as a supposed "legal alternative" to marijuana and for the purpose of being consumed by an individual, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse, especially among teens and young adults. Calls to New York State Poison Control centers relating to the consumption of synthetic cannabinoids have increased dramatically, with a total of 105 reported incidents of exposure to these substances having been reported since 2011, compared to four reported instances in 2009 and 2010. Over half of the calls to the Upstate Poison Control Center this year involved children under the age of 19 years of age which is consistent with the results of a 2011 Monitoring the Future national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors. Nationally, poison control centers have received over 10,000 calls relating to exposure to these substances from January 2011 to June 2012. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning. Therefore, it is

clear that many additional New York residents have been harmed as a result of using products containing synthetic cannabinoids.

On May 20, 2011, pursuant to Public Health Law § 16, the Commissioner issued an Order for Summary Action that, among other things, prohibited the sale or distribution of bath salts. Thereafter, on March 28, 2012, pursuant to Public Health Law § 16, the Commissioner issued an Order for Summary Action that, among other things, prohibited the sale or distribution of synthetic cannabinoids. However, abuse of bath salts synthetic cannabinoids has continued in New York State, and therefore stronger measures are required to protect the public from the dangerous effects of these substances.

Thus, to protect the public from the ongoing threat posed by synthetic phenethylamines and synthetic cannabinoids, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to add a new Part 9, to be effective upon publication of a Notice of Adoption in the New York State Register.

A new Part 9 is added to read as follows:

Part 9

Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited

Sec.



§ 9.1 Definitions.

(a) Synthetic Phenethylamine means any of the following chemical compounds, that are not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and are not approved by the federal Food and Drug Administration ("FDA"):

3,4-Methylenedioxymethcathinone (Methylone);

4-Methoxymethcathinone;

3-Fluoromethcathinone;

4-Fluoromethcathinone;

Ethylpropion (Ethcathinone);

2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E)

2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D)

2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C)

2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C–I)

2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–2)

2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C–T–4)

2-(2,5-Dimethoxyphenyl)ethanamine (2C–H)

2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N)

2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P); and

any compound that has a chemical structure that is substantially similar to these compounds.

(b) Synthetic Cannabinoid means any chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of § 3306 of the Public Health Law, and not approved by the federal Food and Drug Administration (FDA), and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

i) Naphthoylindoles. Any compound containing a 3-(1-Naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH 015, JWH 018, JWH 019, JWH 073, JWH 081, JWH 122, JWH 200, JWH 210, JWH 398, AM 2201, and WIN 55 212).

ii) Naphthylmethylindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH-175, and JWH-184).

iii) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH 307).

iv) Naphthylmethylindenes. Any compound containing a naphthylmethyl indenes structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-

morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH-176).

v) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: RCS-8 (SR-18), JWH 250, JWH 203, JWH-251, and JWH-302).

vi) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: CP 47,497 (and homologues (analogs)), cannabicyclohexanol, and CP 55,940).

vii) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methy1-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: AM 694, Pravadoline (WIN 48,098), RCS 4, and AM-679).

viii) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-napthalenylmethanone. (Other names in this structural class include but are not limited to: WIN 55,212-2).

ix) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol. (Other names in this structural class include but are not limited to: HU-210).

x) (6aS, 10aS)-9-(hydrxymethyl)-6,6-demethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo{c}chromen-l-ol (Dezanabinol or HU-211).

xi) Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AM-1248).

xii) Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug.

(c) Possession means to have physical possession or otherwise to exercise dominion or control over synthetic phenethylamine or synthetic cannabinoid, or a product containing the same. For purposes of this definition, among other circumstances not limited to these examples, the following individuals and/or entities shall be deemed to possess synthetic phenethylamine or synthetic cannabinoid, or a product containing the same:

(1) any individual or entity that has an ownership interest in a retail, distribution or manufacturing establishment that possesses, distributes, sells or offers for sale a synthetic phenethylamine or synthetic cannabinoid, or a product containing the same; and

(2) any clerk, cashier or other employee or staff of a retail establishment, which establishment possesses, distributes, sells or offers for sale a synthetic phenethylamine or synthetic cannabinoid, or a product containing the same, who interacts with customers or other members of the public.

§ 9.2 Possession, Manufacture, Distribution, Sale or Offer of Sale of Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited. It shall be unlawful for any individual or entity to possess, manufacture, distribute, sell or offer to sell any synthetic phenethylamine or synthetic cannabinoid or product containing the same, except as expressly exempted by this Part.

§ 9.3 Exemptions. The provisions of this Part prohibiting the possession of any synthetic phenethylamine or synthetic cannabinoid, or product containing the same shall not apply to:

(a) public officers or their employees in the lawful performance of their official duties requiring possession of synthetic phenethylamines or synthetic cannabinoids, or products containing the same;

(b) temporary or incidental possession by employees or agents of persons lawfully entitled to possession, or persons whose possession is for the purpose of aiding public officers in performing their official duties;

(c) a person in the employ of the United States government or of any state, territory, district, county, municipal or insular government, obtaining or possessing synthetic phenethylamines or

synthetic cannabinoids, or products containing the same, by reason of his or her official duties;

(d) common carriers or warehousemen, while engaged in lawfully transporting or storing synthetic phenethylamines or synthetic cannabinoids, or products containing the same, or to any employee of the same within the scope of his or her employment;

(e) laboratories with a federal Drug Enforcement Administration ("DEA") license to purchase and use schedule I controlled substances for research and/or analytical testing; and

(f) manufacturers that are registered with the DEA to synthesize and distribute controlled substances.

§ 9.4 Penalties. A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each packet, individual container or other separate unit of synthetic phenethylamine or synthetic cannabinoid, or product containing the same, that is possessed, manufactured, distributed, sold, or offered for sale, shall constitute a separate violation under this Part.

§ 9.5 Commissioner's Order. The Commissioner has authority to issue orders to address dangers to the health of the people as set forth in Public Health Law § 16. The Commissioner can exercise such authority to address a violation of this Part if, in his or her opinion, such a danger exists. It is hereby recognized that, dependent upon the opinion and discretion of the Commissioner as applied to each circumstance, he or she may issue such an order in the event of a continuing or repeat violation of this Part at or by a retail establishment when the entity and/or its owner(s) or employee(s) knew or should have known of the violation. As determined by the Commissioner, such an order could require the closure of the retail establishment, among other

relief. Although not required, this section serves as notice that such an order could be issued. The circumstances and relief described in this notice are only examples and in no way bind the Commissioner or limit his or her authority to issue such an order, or the relief set forth in such an order, under any circumstance whatsoever.

§ 9.6 Severability. If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

## Regulatory Impact Statement

**Statutory Authority:**

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

**Legislative Objectives:**

This rulemaking is in accordance with the legislative objective of PHL Section 225(4) authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Specifically, this regulation prohibits the possession, manufacture, distribution, sale or offer of sale of substances and products containing synthetic phenethylamines and synthetic cannabinoids, chemical compounds which are causing serious adverse health outcomes and particularly affecting New York State teenagers and young adults.

**Needs and Benefits:**

This regulation pertains to synthetic phenethylamines that are commonly packaged and marketed online, in convenience stores, gas stations and smoke shops as “bath salts,” plant food and other ordinary household goods, and which are not approved by the federal Food and Drug Administration (“FDA”). The compounds stimulate the body’s central nervous system, and cause effects similar to those caused by cocaine and amphetamines, including but not limited to increased heart rate and blood pressure, hallucinations, paranoia, suicidal thoughts, violent behavior, nausea and vomiting. Some synthetic phenethylamines are also commonly referred to

as “designer drugs” because they are specifically synthesized with a similar, but slightly modified structure of a Schedule I controlled substance in order to avoid existing drug laws, and can be continually chemically modified to avoid legal repercussions, while maintaining their intended effects and usages. Certain synthetic phenethylamines are prevalent drugs of abuse.

From January 2011 through April 2012, poison control centers throughout the United States have received over 7,000 calls regarding instances of poisoning from products containing synthetic phenethylamines, including instances resulting in accidental death and suicide. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning, and many additional New York residents are likely to have been harmed as a result of using products containing synthetic phenethylamines. In addition, between January 1, 2011 and August 2, 2012, there were approximately 230 emergency department visits in New York (not including New York City) in which effects from consuming a product with synthetic phenethylamines or “bath salts” were the patient’s chief complaint. One hundred twenty of these visits occurred in June and July, 2012, indicating that usage of these substances is increasing at a remarkable rate.

Poison control center experts, who have first-hand knowledge of the devastation that synthetic phenethylamines wreak on individuals and their families, say these substances are among the worst they have ever seen. They report that people high on these compounds can get very agitated and violent, exhibit psychosis and severe behavior changes, and have harmed themselves and others. Some have been admitted to psychiatric hospitals and have experienced continued neurological and psychological effects.

“Synthetic cannabinoids” encompass a wide variety of chemicals that are synthesized and marketed to mimic the action of the cannabinoid 9-tetrahydrocannabinol (THC). Synthetic

cannabinoids have been linked to severe adverse reactions, including death and acute renal failure, and reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness).

Synthetic cannabinoids are frequently applied to plant materials and then packaged and marketed online and in convenience stores, gas stations and smoke shops as incense, herbal mixtures or potpourri. They often carry a "not for human consumption" label, and are not approved for medical use in the United States.

Products containing synthetic cannabinoids are, in actuality, produced, distributed, marketed and sold, as a supposed "legal alternative" to marijuana and for the purpose of being consumed by an individual, most often by smoking, either through a pipe, a water pipe, or rolled in cigarette papers.

Products containing synthetic cannabinoids have become prevalent drugs of abuse, especially among teens and young adults. Calls to New York State Poison Control centers relating to the consumption of synthetic cannabinoids have increased dramatically, with a total of 105 reported incidents of exposure to these substances since 2011, compared to four reported instances in 2009 and 2010. Over half of the calls to the Upstate Poison Control Center this year involved children under the age of 19, which is consistent with the results of a 2011 "Monitoring the Future" national survey of youth drug-use trends that showed that 11.4% of 12th graders used a synthetic cannabinoid during the twelve months prior to the survey, making it the second most commonly used illicit drug among high school seniors. Nationally, poison control centers have received over 10,000 calls relating to exposure to these substances from January 2011 to June 2012. Calls received by poison control centers generally reflect only a small percentage of actual

instances of poisoning. Therefore, it is clear that many additional New York residents have been harmed as a result of using products containing synthetic cannabinoids.

On May 20, 2011, pursuant to Public Health Law § 16, the Commissioner issued an Order for Summary Action that, among other things, prohibited the sale or distribution of bath salts. Thereafter, on March 28, 2012, pursuant to Public Health Law § 16, the Commissioner issued an Order for Summary Action that, among other things, prohibited the sale or distribution of synthetic cannabinoids. However, abuse of synthetic phenethylamines and synthetic cannabinoids has escalated in New York State, and stronger measures therefore are required to protect the public from the dangerous effects of these substances.

**Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law. Costs will be offset further by a reduction in occasions needing emergency response and/or law enforcement involvement, as well as a reduction in health care and other State and local resources currently being used to respond to and address the negative effects of usage of the substances at issue.

**Local Government Mandates:**

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with

the SSC through a local sanitary code. PHL § 228. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including this new Part, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1) (e).

**Paperwork:**

The regulation imposes no new reporting or filing requirements.

**Duplication:**

On May 20, 2011, the Commissioner of Health of the State of New York issued an Order for Summary Action banning the sale and distribution of certain products containing synthetic cathinone (a category of phenethylamines). On March 28, 2012, the Commissioner of Health of the State of New York issued an Order for Summary Action banning the sale and distribution of products containing synthetic cannabinoids. These Commissioner's Orders, unlike this regulation, are not enforceable by local governments or criminal authorities, and the sole enforcement mechanism for violations of the Order is a civil enforcement proceeding for an injunction and civil penalties through the State Attorney General. In addition, the Commissioner's Orders do not prohibit possession or manufacture of some synthetic phenethylamines and/or synthetic cannabinoids. Further, the Commissioner's Orders are only binding on and enforceable against those individuals and entities who received personal service of the Commissioner's Orders.

On July 9, 2012 President Barack Obama signed a Bill (S.3187) into law which, in relevant part, enacted the federal Synthetic Drug Abuse Prevention Act of 2012. The law banned the sale and distribution of products containing most of the types of synthetic phenethylamines and synthetic cannabinoids identified in this regulation by placing them on the federal schedule I list of substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]). This

regulation does not conflict because the federal law does not provide for state and local authority enforcement.

**Alternatives:**

The alternative of continued sole reliance on the May 20, 2011 and March 28, 2012 Commissioner's Orders was considered. Promulgating this regulation, however, was decided upon in order to provide enhanced enforcement authority and regulatory authority for state and local governments to more effectively address this emergent and expanding public health threat.

**Federal Standards:**

The New York regulation is broader than the recent federal Synthetic Drug Abuse Prevention Act of 2012 in that it covers additional classes of stimulant compounds. Further, it anticipates future synthesis of stimulant compounds not yet developed, specifically cannabinoid receptor agonists. Analysis methodologies will need to be developed as additional related compounds are synthesized.

**Compliance Schedule:**

Regulated parties should be able to comply with these regulations effective upon publication of a Notice of Adoption in the New York State Register.

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## Regulatory Flexibility Analysis for Small Business and Local Governments

**Effect of Rule:**

The rule will affect only the small businesses which are engaged in selling products containing certain harmful substances known as synthetic phenethylamines and synthetic cannabinoids. At this time, it is not possible to determine the number of small businesses that sell these products. However, in 2011 and 2012, Commissioner's Orders were issued banning certain synthetic phenethylamines and synthetic cannabinoids and resulted in approximately 7,000 establishments being served with one or both of such Orders by public health authorities.

This regulation affects local governments by establishing a minimum standard regarding the possession, manufacture, distribution, sale or offer of sale of synthetic phenethylamines and synthetic cannabinoids. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including this new Part, utilizing any civil and criminal remedies that may be available. PHL §§ 228, 229, 309(1)(f) and 324(e).

Pursuant to PHL § 228, the State Sanitary Code establishes a minimum standard for health and sanitation. Under that same authority, local governments are empowered to establish a local sanitary code that is more restrictive than the State Sanitary Code. Many local governments already have local sanitary codes that are more restrictive than the State Sanitary Code.

**Compliance Requirements:**

Small businesses must comply by not engaging in any possession, manufacturing, distribution, sale or offer of sale of synthetic phenethylamines and synthetic cannabinoids.

Local governments must comply by enforcing the State Sanitary Code. Local boards of health may impose civil penalties for a violation of this regulation of up to $2,000 per violation,

pursuant to PHL § 309(1)(f). Pursuant to PHL § 229, local law enforcement may seek criminal penalties for a first offense of up to $250 and 15 days in prison, and for each subsequent offense up to $500 and 15 days in prison.

**Professional Services:**

Small businesses will need no additional professional services to comply.

Local governments, in certain instances where local governments enforce, will need to secure laboratory services for testing of substances.

**Compliance Costs:**

**Costs to Private Regulated Parties:**

The regulation imposes no new costs for private regulated parties.

**Costs to State Government and Local Government:**

Any enforcement costs incurred by State and local governments cannot be predicted, but are likely to be offset by fines and penalties imposed pursuant to Public Health Law. Moreover, any such costs will be further offset by a reduction in emergency responder, law enforcement, health care and other State and local resources currently being used to respond to and address the negative effects of usage of the prohibited substances.

**Economic and Technological Feasibility:**

Although there will be an impact on small businesses that sell these products, the prohibition is justified by the extremely dangerous nature of these products.

Although the costs of local enforcement are not precisely known at this time, the benefits to public health are anticipated to outweigh any such costs. Regarding technical feasibility, as new designer drugs become available, new tests will need to be developed.

This regulation is necessary to protect public health. It is as narrowly tailored as possible

while still addressing the public health threat.

**Minimizing Adverse Impact:**

The New York State Department of Health will assist local government, e.g. consultation, coordination and providing information and updates on its website.

**Small Business and Local Government Participation:**

Local governments are aware of and have been involved in notifying certain small businesses regarding prior Commissioner's Orders on this same matter.

**Cure Period:**

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by these substances, the risk that some small businesses will not comply with regulations and continue to make or sell or distribute the substance justifies the absence of a cure period.

## Rural Area Flexibility Analysis

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

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

## Job Impact Statement

**Nature of the Impact:**

The Department of Health does not expect there to be a positive or negative impact on jobs or employment opportunities.

**Categories and Numbers Affected:**

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

**Regions of Adverse Impact:**

The Department anticipates no negative impact on jobs or employments opportunities in any particular region of the state.

**Minimizing Adverse Impact:**

Not applicable.