

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

**AGENDA**

*December 6, 2012*

*Immediately Following the Committee on Codes, Regulations and Legislation, and Committee  
on Health Planning  
(scheduled to begin at 9:45 a.m.)*

*OGS Concourse Meeting Room #6  
Albany, New York*

**I. INTRODUCTION OF OBSERVERS**

Dr. William Streck, Chairman

**II. APPROVAL OF MINUTES**

**To be distributed under separate cover**

**III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES**

**A. Report of the Department of Health**

Nirav R. Shah, M.D., M.P.H., Commissioner of Health

**B. Report of the Office of Health Systems Management Activities**

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

**IV. PUBLIC HEALTH SERVICES**

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

Dr. Boufford, Chair of the Public Health Committee

Adoption of the Prevention Agenda 2013-17, The State Health Improvement Plan – **To be distributed under separate cover** **Exhibit #1**

**V. REGULATION**

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

Angel Gutiérrez, M.D., Chair

**For Adoption**

12-13 Addition of New Section 86-2.41 to Subpart of Title 10  
(Nursing Home Sprinklers)

12-19 Addition of Part 9 to Title10 NYCRR (Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited)

**For Emergency Adoption**

12-19 Addition of Part 9 to Title 10 NYCRR (Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited)

**For Information**

11-09 Amendment of Part 16 of Title 10 NYCRR (Quality Assurance Requirements for Medical Use of Radioactive Material and Radiation Therapy)

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

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

Jeffrey Kraut, Chair

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

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

**NO APPLICATIONS**

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

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

**CON Applications**

**Acute Care Services – Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122055 C	Erie County Medical Center (Erie County) Mr. Booth - Interest	Contingent Approval

**Ambulatory Surgery Center – Construction**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122032 C	Corning Hospital (Chemung County) Mr. Booth - Interest	Contingent Approval

**Residential Health Care Facilities – Construction**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121466 C	Long Island State Veterans Home (Suffolk County) Mr. Fassler – Interest	Contingent Approval

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

**Exhibit #6**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 122050 C	Lutheran Augustana Center for Extended Care & Rehabilitation, Inc. (Kings County) Mr. Fassler - Interest	Contingent Approval

**Dialysis Services - Construction**

**Exhibit #7**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 121230 C	New York Dialysis Services, Inc. d/b/a FMS – Southern Manhattan Dialysis Center (Wayne County) Mr. Booth – Interest	Contingent Approval

**Certified Home Health Agency – Construction**

**Exhibit #8**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 121248 C	Elderserve Long Term Health Care (Westchester County) Mr. Fassler - Interest	Contingent Approval

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

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

**NO APPLICATIONS**

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**Certified Home Health Agency – Construction**

**Exhibit #9**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 121255 C	Visiting Nursing Association of Western New York, Inc. (Cattaraugus County) Mr. Booth – Recusal Ms. Hines – Recusal Mr. Robinson - Recusal	No Recommendation

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

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

**CON Applications**

**Dialysis Services – Establish/Construct**

**Exhibit #10**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 121106 B	Enchanted Dialysis, LLC d/b/a Newark Wayne Dialysis Center (Wayne County)	Contingent Approval

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #11**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 121017 B	Surgery of Tomorrow, LLC (Kings County)	Contingent Approval

2.	121393 B	IDHC, LLC d/b/a Island Digestive Health Center (Suffolk County)	Contingent Approval
3.	121412 B	LIEAC, LLC d/b/a Long Island Digestive Endoscopy Center (Suffolk County)	Contingent Approval
4.	122071 B	21 Reade Place, ASC, LLC (Dutchess County)	Contingent Approval

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

**Exhibit #12**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122069 E	New Alternatives for Children, Inc. (New York County)	Contingent Approval

**Residential Health Care Facilities – Establish**

**Exhibit #13**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122046 E	Hamilton Park Nursing and Rehabilitation Center (Kings County)	Contingent Approval

**Certified Home Health Agencies – Establish**

**Exhibit #14**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121120 E	Premier Home Health Care Services, Inc. (Kings County)	Contingent Approval
2.	121263 E	Selfhelp Family Home Care, Inc. (New York County)	Contingent Approval

**Certificate of Incorporation**

**Exhibit #15**

	<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
1.	AIDS Community Services of Western New York, Inc.	Approval
2.	New York Foundation for Elder Care	Approval

- |    |                              |          |
|----|------------------------------|----------|
| 3. | Horizon Human Services, Inc. | Approval |
| 4. | Jewish Home Foundation, Inc. | Approval |

**Restated Certificate of Incorporation**

**Exhibit #16**

**Applicant**

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

- |    |  |          |
|----|--|----------|
| 1. | Nassau County AHRC Foundation, Inc.                  | Approval |
| 2. | St. Elizabeth Seton Children’s Foundation            | Approval |
| 3. | Asian & Pacific Islander Coalition on HIV/AIDS, Inc. | Approval |

**Certificates of Dissolution**

**Exhibit #17**

**Applicant**

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

- |    |                                      |          |
|----|--------------------------------------|----------|
| 1. | The Childbirth Connection Foundation | Approval |
| 2. | Pinnacle Healthcare, Inc.            | Approval |

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #18**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
2019 L	Angela Dawn Donahue d/b/a Quality Home Health Care (Otsego County)	Contingent Approval
2012 L	Care Connection Home Care, LLC (Nassau, Queens, Suffolk Counties)	Contingent Approval
1941 L	D2 Enterprises, Inc. d/b/a Home Helpers #58507 (Westchester County)	Contingent Approval
1663 L	Finest Home Care Corp. (Bronx, Richmond, Kings, Westchester, New York, Queens Counties)	Contingent Approval

1921 L	Golden Touch Home Health Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
1984 L	Goldenhearts Elderly Care Services, Inc. (Bronx, New York, Kings, and Queens Counties)	Contingent Approval
1978 L	Health and Comfort Home Care, Inc. (New York, Kings, Queens, Bronx, and Richmond Counties)	Contingent Approval
1697 L	Jacqueline Asante d/b/a Van Cortlandt Home Healthcare Agency (Bronx, County)	Contingent Approval
1809 L	LH Wellbeing Care, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2002 L	Paraclete Home Health Care, LLC (Nassau, Suffolk and Queens Counties)	Contingent Approval
1997 L	PSC Community Support Services, Inc. d/b/a Blue Parasol (New York, Kings, Queens, Bronx and Richmond Counties)	Contingent Approval
2014 L	Responsible Care Staffing, Inc. (Bronx and New York Counties)	Contingent Approval
2003 L	MJO Enterprises, Inc. d/b/a Right at Home (Nassau and Queens Counties)	Contingent Approval



2026 L	SARA Companion Services, Inc. (Nassau, Suffolk, Queens, Kings, New York, Bronx, and Richmond Counties)	Contingent Approval
1934 L	Today's Homecare, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)	Contingent Approval
2044 L	York Healthcare, LLC (Bronx, Richmond, New York, Nassau, Kings, and Queens Counties)	Contingent Approval
1988 L	Advance Home Care, LLC d/b/a Sincere Care Agency (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
1993 L	Human Care, LLC (New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)	Contingent Approval
2012 L	Light 101, Inc. (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval

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

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

**CON Applications**

**Acute Care Services – Establish/Construct**

**Exhibit #19**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122075 E	Clifton-Fine Health Care Corporation d/b/a Clifton-Fine Hospital (St. Lawrence County) Mr. Booth - Interest	Contingent Approval

**Residential Health Care Facility – Establish/Construct**

**Exhibit #20**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	112339 E	Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center (Putnam County) Mr. Fensterman - Recusal	Contingent Approval
2.	121191 E	Eastchester Rehabilitation and Health Care Center (Bronx County) Mr. Fensterman - Recusal	Approval
3.	122095 E	Queens Boulevard Extended Care Facility Management, LLC d/b/a Queens Boulevard Extended Care Facility (Queens County) Mr. Fensterman - Recusal	Contingent Approval
4.	121347 E	Hollis Operating Co., LLC d/b/a Holliswood Center for Rehabilitation and Healthcare (Queens County) Mr. Fassler – Recusal Mr. Fensterman - Recusal	Contingent Approval

**Certified Home Health Agencies – Establish**

**Exhibit #21**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	122145 E	Ganzel NY, Inc. d/b/a Revival Home Health Care (Kings County) Mr. Fensterman – Recusal	Contingent Approval
2.	121240 E	Your Choice At Home, Inc. (Kings County) Mr. Fassler – Interest	Contingent Approval

**Amended and Restated Certificate of Incorporation**

**Exhibit #22**

	<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
1.	Health Alliance, Inc. Dr. Berliner – Recusal	Approval
2.	Benedictine Hospital Dr. Berliner – Recusal	Approval
3.	The Kingston Hospital Dr. Berliner – Recusal	Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #23**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	2011 L	Oceanview Manor Home for Adults, Inc. (Kings County) Mr. Fensterman - Recusal	Contingent Approval

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

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

**Residential Health Care Facility – Establish/Construct**

**Exhibit #24**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122147 B	VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center (Broome County) Mr. Fensterman – Abstained at the EPRC meeting	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**

**VII. HEALTH POLICY**

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

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

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

Adoption of CON Redesign Recommendations – **Distributed under  
separate cover**

**Exhibit #25**

**X. NEXT MEETINGS**

Planning Committee – January 24, 2013, NYC  
Full Council – February 7, 2013, NYC

**XI. ADJOURNMENT**

**TO BE DISTRIBUTED UNDER SEPARATE COVER**

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

**December 6, 2012**

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**PUBLIC HEALTH SERVICES**

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

Dr. Boufford, Chair of the Public Health Committee

Adoption of the Prevention Agenda 2013-17, The State Health  
Improvement Plan – **To be distributed under separate cover**

**Exhibit #1**

**TO BE DISTRIBUTED UNDER SEPARATE COVER**

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

**December 6, 2012**

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**REGULATION**

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

**Exhibit #2**

Angel Gutiérrez, M.D., Chair

**For Adoption**

12-13 Addition of New Section 86-2.41 to Subpart of Title 10  
(Nursing Home Sprinklers)

12-19 Addition of Part 9 to Title 10 NYCRR (Synthetic Phenethylamines  
and Synthetic Cannabinoids Prohibited)

**For Emergency Adoption**

12-19 Addition of Part 9 to Title 10 NYCRR (Synthetic Phenethylamines  
and Synthetic Cannabinoids Prohibited)

**For Information**

11-09 Amendment of Part 16 of Title 10 NYCRR (Quality Assurance  
Requirements for Medical Use of Radioactive Material and Radiation  
Therapy)



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

#### 86-2.41 Sprinkler systems

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

(1) For the purposes of this 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](mailto: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.

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

##### 9.2 Possession, Manufacture, Distribution, Sale or Offer of Sale of Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited

##### 9.3 Exemptions

##### 9.4 Penalties

##### 9.5 Commissioner's Order

##### 9.6 Severability

#### § 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 (analogues), and salts of isomers and homologues (analogues), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogues), and salts of isomers and homologues (analogues) 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) Naphthylmethylinindoles. 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) Naphthylmethylinindenes. 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-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: 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-naphthalenylmethanone. (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-1-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.

**Contact Person:**

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

## **Regulatory Flexibility Analysis 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.



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 with the Secretary of State.

A new Part 9 is added to read as follows:

## Part 9

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#### § 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 (analogues), and salts of isomers and homologues (analogues), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogues), and salts of isomers and homologues (analogues) 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) Naphthylmethylinindoles. 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) Naphthylmethylinindenes. 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 (analog)), 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-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: 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-naphthalenylmethanone. (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-1-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.

**Contact Person:**

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

## **Regulatory Flexibility Analysis 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.

## Summary of Express Terms

The regulatory proposal would revise Part 16 of 10 NYCRR as described in more detail below.

Subdivision (c) of section 16.1 is revised to update the address and phone number of the Department of Health's Bureau of Environmental Radiation Protection and to allow certain reports to be filed electronically with the Department.

Paragraph (15) of subdivision (a) of section 16.2 is amended to make the definition of "byproduct material" comparable to the definition of byproduct material in NRC regulations.

Paragraph (134) of subdivision (a) of section 16.2, which contains an outdated definition of the term "tutelage," is repealed.

Subdivision (a) of section 16.24 is repealed and replaced with a new subdivision (a), which includes updated quality assurance standards for licensees or registrants authorized to administer external beam therapy or brachytherapy to human beings. The new subdivision includes quality standards appropriate for newer, more complex radiation therapy treatment systems and also requires additional verification of radiation set-up equipment and treatment plans prior to administering radiation treatments to patients. New subdivision (a) also requires quality assurance programs to cover data communication/transfer between component systems of planning and treatment delivery systems to ensure complete (uncorrupted) data transfer. Additionally, the new section requires licensees and registrants to credential individuals involved



in quality assurance testing, treatment planning, and radiation treatment of patients. Finally, new subdivision (a) requires licensees and registrants to be accredited in radiation oncology by the American College of Radiology or the American College of Radiation Oncology, or another equivalent accrediting organization, within 18 months of the effective date of the regulation.

Section 16.100 is repealed and replaced with a new section 16.100 to update the licensing requirements for licensure of radioactive materials.

Sections 16.120 and 16.121 are repealed and replaced with a new section 16.120 which sets forth the licensing requirements for human use of radioactive material.

Section 16.122 is repealed. The requirements for teletherapy units are included in the proposed new section 16.123.

Current section 16.123 is repealed and replaced with a new section 16.123. The new version updates the standards for the medical use of radioactive materials, consistent with the federal Nuclear Regulatory Commission (NRC) regulations governing the medical use of radioactive materials; updates definitions to be consistent with federal regulatory definitions; updates the training and experience requirements for physicians, pharmacists and medical physicists who use radioactive materials for medical purposes; and revises and creates new categories of medical use licenses. The new section 16.123 incorporates certain federal regulatory requirements by reference; it also establishes regulatory requirements specific to New York State that are consistent with the federal regulatory requirements.

The proposed section 16.2 will have a significant impact on physicians who wish to use radiopharmaceuticals for diagnostic nuclear medicine and nuclear cardiology. The current section requires 200 hours of classroom training. By removing this requirement and incorporating the federal classroom training requirements set forth in 10 CFR Part 35, the required classroom and laboratory training hours will be reduced to 80 hours for physicians applying for authorized user status for diagnostic uses. In addition, these physicians would be allowed to obtain the practical training component in a private medical practice setting. Currently such training can be obtained only at a medical institution (hospital). By incorporating the training requirements established in 10 CFR Part 35, the total number of training hours for physicians who use radioactive materials will remain at 700 hours.

Relative to the new categories of medical use licenses, the new section 16.123 includes a category that covers gamma knife radiosurgery units and high dose rate remote afterloaders. Quality assurance requirements are modified to reflect the revised and new categories. The dose limits for members of the public and occupationally exposed individuals are modified to exclude exposure from individuals administered radioactive material and released in accordance with regulations.

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, Sections 16.1, 16.2, 16.24, 16.100, 16.120, 16.121, 16.122 and 16.123 of Part 16 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (c) of Section 16.1 is REPEALED and new subdivision (c) of Section 16.1 is added as follows:

(c) Communications. Except as otherwise provided for in this Part or authorized by the Department, all applications, notifications or other communications filed pursuant to this Part shall be addressed to the New York State Department of Health Bureau of Environmental Radiation Protection, Empire State Plaza, Albany, New York 12237, or by telephone (518) 402-7550. Registrants and licensees that are authorized pursuant to Article 28 of the Public Health Law to operate a hospital may comply with adverse event reporting required by this Part by electronic filing with the Department via the New York Patient Occurrence and Tracking System (NYPORTS).

Paragraph (15) of subdivision (a) of Section 16.2 is amended as follows:

(15) Byproduct material [means] shall include:

(i) Any radioactive material, except special nuclear material, yielded in, or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; [and]

(ii) the tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes[. Underground]; however, ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition[.];

(iii) any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity;

(iv) any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity.

(v) any discrete source of naturally occurring radioactive material, other than source material, that is extracted or converted after extraction for use in a commercial medical or research activity that the Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate Federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security.

Paragraph (134) of subdivision (a) of Section 16.2 is REPEALED and reserved.

Subdivision (a) of section 16.24 is REPEALED and a new subdivision 16.24(a) is added to read as follows:

(a) External beam therapy and brachytherapy. Each licensee or registrant authorized to administer external beam therapy or brachytherapy to human beings shall implement a quality assurance program to systematically monitor, evaluate and document radiation therapy services to ensure consistent and safe fulfillment of the dose prescription to the target volume, with minimal dose to normal tissues, minimal exposure to personnel and adequate patient monitoring aimed at determining the end result of the treatment. Each such licensee or registrant shall meet or exceed all quality assurance criteria described in this subdivision.

(1) Each licensee or registrant shall adopt and maintain a quality assurance manual that includes policies and procedures that require the following:

(i) Each patient's medical record shall be complete, accurate, legible and shall include the patient's initial clinical evaluation, treatment planning data, treatment execution data, clinical assessments during treatment, a treatment summary and plan for subsequent care. Treatment related data shall be recorded in the patient's medical record at the time of each treatment.

(ii) A written and dated order or prescription for the medical use of radiation or radioactive material shall be made for each patient in accordance with subdivisions (b) and (c) of section

16.19 of this Part. The order or prescription shall be signed or approved electronically by a board certified radiation oncologist or qualified physician who restricts his or her practice to radiation oncology.

(iii) The accuracy of treatment plan data and any modifications to treatment plan data transferred to a radiation treatment delivery system shall be verified by qualified clinical staff prior to patient treatment.

(iv) A radiation therapy technologist, physician or other qualified health practitioner shall verify that the patient set up on the treatment machine is in accordance with the treatment plan prior to the first fraction of a course of treatment and prior to treatment for any changes to the initial treatment plan.

(v) Clinical staff shall obtain clarification before beginning a patient's treatment if any element of the order or other record is confusing, ambiguous, erroneous or suspected of being erroneous.

(vi) Each patient's identification shall be verified by at least two different means by qualified clinical staff prior to each treatment.

(vii) Each patient's response to treatment shall be assessed by a board certified radiation oncologist or other qualified physician in the active practice of external beam therapy and/or brachytherapy. Unusual responses shall be evaluated as possible indications of treatment errors and recorded in the patient's medical record.

(viii) The medical records of patients undergoing fractionated treatment shall be checked for completeness and accuracy by qualified clinical staff at intervals not to exceed six fractions.

(ix) Radiation treatment plans and related calculations shall be checked by qualified clinical staff for accuracy before 25 percent of the prescribed dose for external beam therapy or 50 percent of the prescribed dose for brachytherapy is administered, except the check shall be performed prior to treatment for: any single fraction treatment; any fractional dose that exceeds 300cGy or 700 monitor units; or when the output of a medical therapy accelerator exceeds 600 monitor units per minute during treatment. If a treatment plan and related calculations were originally prepared by a board certified radiation oncologist or an authorized medical physicist possessing the qualifications specified in paragraph (1) of subdivision (d) of section 16.123 of this Part, it may be rechecked by the same individual using a different calculation method.

Treatment plans and related calculations prepared by other qualified clinical personnel must be checked by a second qualified person using procedures specified in the registrant's or licensee's treatment planning procedures manual required pursuant to subparagraph (2) of this paragraph, and who has received training in use of the manual pursuant to subparagraph (2) of this paragraph.

(x) All equipment and other technology used in planning and administering radiation therapy shall function properly and safely, and shall be calibrated properly and repaired and maintained in accordance with the manufacturer's instructions. The equipment and technology that is subject to such quality control includes but is not limited to: computer software and hardware including upgrades and new releases; equipment used to perform simulation; dosimetry equipment;

equipment used to guide treatment delivery, including but not limited to ultrasound units, kV and mV imaging equipment and monitors that are used to view patient imaging studies; and personnel radiation safety equipment. Data communication between various systems, including but not limited to treatment planning systems, treatment delivery systems and data networks/storage media, shall be evaluated and tested to ensure accurate and complete data transfer.

(xi) Quality control tests performed on equipment and technology used in planning and implementing radiation treatment shall be documented, including:

(a) detailed procedures for performing each test;

(b) the frequency of each test;

(c) acceptable results for each test;

(d) corrective actions taken;

(e) record keeping and reporting procedures for test results including the tester's name, signature and date of the test; and

(f) the qualifications are specified for the individual(s) conducting the test and for the person who reviews test data.



(xii) Test results that exceed tolerances/limits shall be immediately reported to the authorized medical physicist.

(xiii) Records for all maintenance, repairs and upgrades of equipment and technology shall be maintained for at least five years.

(xiv) Errors or defects in technology or equipment, including computer hardware and software, shall be reported to the technology or equipment manufacturer and to the United States Food and Drug Administration (MedWatch) as soon as possible and in no event more than 30 days of discovery, and records of equipment errors and reports required by this clause shall be maintained for review by the Department for at least three years.

(xv) External beam therapy equipment calibration/output required by section 16.60(c)(1) of this Part shall be verified by an independent means and records of such measurements shall be retained for review by the Department for at least three years.

(xvi) Patients with permanent brachytherapy implants shall be provided with instructions to take radiation safety precautions, as required by section 16.123(e)(4) (incorporating 10 CFR 35.75) and the licensee's radioactive materials license, after being released from the licensee's facility.

(xvii) All personnel involved in planning or implementing radiation therapy shall be credentialed. Credentialing shall include verifying that all professional staff are appropriately licensed, including medical physicists and radiation therapy technologists. Records of

credentialing shall be maintained during the period in which the credentialed person provides services to the licensee or registrant and for three years thereafter.

(xviii) Any unintended deviation from the treatment plan that is identified shall be evaluated and corrective action to prevent recurrence shall be implemented. Records of unintended deviations and corrective action shall be maintained for audits required by paragraph (4) of this subdivision and for review by the Department.

(xix) There shall be a process to ensure quick and effective response to any radiation therapy related recalls, notices, safety alerts and hazards.

(2) Each licensee or registrant shall adopt and maintain a radiation treatment manual that includes the calculation methods and formulas to be used at the facility (including the methods for performing the checks of treatment plans and related calculations as required in paragraph (1) of this subdivision). The treatment planning manual may be part of the quality assurance manual required by paragraph (1) of this subdivision. The radiation treatment manual shall be included in training given pursuant to subdivision (c) of section 16.13 of this Part to facility staff who will participate in treatment planning. Each licensee or registrant shall ensure that an authorized medical physicist possessing the qualifications specified in paragraph (1) of subdivision (d) of section 16.123 of this Part prepares or reviews and approves a procedures manual describing how radiation therapy treatment planning is to be performed at the licensee's or registrant's facility and reviews the treatment planning manual at least annually.

(3) Each licensee or registrant shall ensure that all equipment used in planning and administering radiation therapy is functioning properly, designed for the intended purpose, properly calibrated, and maintained in accordance with the manufacturer's instructions and the quality assurance program described in the licensee or registrant's quality assurance manual.

(4) Each licensee or registrant shall implement written procedures for auditing the effectiveness of the radiation therapy quality assurance program that include the following:

(i) Audits shall be conducted at intervals not to exceed 12 months by an authorized medical physicist possessing the qualifications specified in paragraph (1) of subdivision (d) of section 16.123 of this Part, and also by a physician, both of whom are in the active practice of the type of radiation therapy conducted by the licensee or registrant.

(ii) The licensee or registrant shall ensure that the individuals who conduct the audit prepare and deliver to the licensee or registrant a report which contains an assessment of the effectiveness of the quality assurance program and makes recommendations for any needed modifications or improvements.

(iii) The licensee or registrant shall promptly review the audit findings, address the need for modifications or improvements, and document actions taken. If recommendations are not acted on, the licensee or registrant shall document the reasons therefor and also alternative actions taken to address the audit findings.

(iv) Each licensee or registrant shall maintain for review and inspection by the Department complete written records relating to quality assurance and audit activities. Audit records shall be maintained for at least 6 years.

(6) Accreditation in Radiation Oncology.

(i) Effective 90 days from the effective date of this regulation, each registrant or licensee shall have an active application with, or be accredited in radiation oncology by, the American College of Radiology, the American College of Radiation Oncology or another accrediting organization that is equivalent as determined by the Department.

(ii) Effective 18 months from the effective date of this regulation, each registrant and licensee shall maintain accreditation in radiation oncology by the American College of Radiology, the American College of Radiation Oncology or another accrediting organization that is equivalent as determined by the Department.

(iii) The registrant or licensee shall maintain a record of accreditation, including a copy of the application, all supplemental application information and all correspondence transmitted between the accrediting body and the registrant or licensee. Records shall be maintained for at least 6 years.

Section 16.100 is REPEALED and new Section 16.100 is added to read as follows:

§16.100 Licensing requirements for use of radioactive materials.

(a) A person may manufacture, produce, acquire, receive, possess, prepare, use or transfer any radioactive materials only in accordance with a specific license issued by the Department or as allowed in paragraphs (b) or (c) of this section.

(b) A specific license is not required for persons who comply with all applicable requirements for a general license as set forth in section 16.101 of this Part.

(c) A specific license is not required for persons who comply with all applicable requirements to qualify for an exemption as set forth in section 16.4 of this Part or other exemptions provided for in this Part or for the removal of source material from its place of deposit in nature.

Section 16.120 is REPEALED and new Section 16.120 is added to read as follows:

§16.120 Specific licenses for the use of radioactive materials on human beings.

An application seeking a specific license for use of radioactive materials on human beings shall be approved if all of the following criteria are satisfied:

(a) The application is completed, signed by an appropriate individual, and submitted to the Department.

(b) The applicant is an individual, corporation, partnership or other entity that is legally authorized to do business in New York State. If the applicant is seeking a specific license

pursuant to section 16.123 of this Part, the applicant shall be legally authorized to practice medicine in New York State or operate a hospital as defined in section 2801 of the Public Health Law.

(c) The applicant satisfies the requirements set forth in section 16.103 of this Part.

(d) The applicant demonstrates to the satisfaction of the Department that it has adequate facilities for clinical care of patients.

(e) The applicant demonstrates to the satisfaction of the Department that its facilities will be appropriately equipped and staffed and will be operated as required by this Part.

(f) The applicant provides additional information as requested by the Department.

Section 16.121 is REPEALED and Reserved.

Section 16.122 is REPEALED and Reserved.

Section 16.123 is REPEALED and a new Section 16.123 is added to read as follows:

§16.123 Specific licenses for certain medical uses of byproduct materials.

(a) Purpose and scope. This section contains requirements for the medical uses of byproduct materials that are subject to specific licenses. These requirements are in addition to, and not a substitute for, other requirements in this Part. Any license issued prior to the effective date of this regulation that references paragraph (b) shall be deemed to reference paragraph (d).

(b) Definitions. Whenever used in this section, or in federal regulations incorporated herein, the following terms shall have the following meanings:

(1) "Authorized medical physicist" means an individual who is authorized to practice medical physics pursuant to Article 166 of the Education Law and:

(i) meets the definition and the training requirements for an authorized medical physicist set forth in 10 CFR §§ 35.2, 35.51 and 35.57; or

(ii) is named as a radiation therapy physicist on a medical use radioactive materials license issued by the Department and meets the requirements set forth in 10 CFR § 35.59.

(2) "Authorized nuclear pharmacist" means an individual who is authorized to practice pharmacy pursuant to Article 137 of the Education Law and:

(i) meets the requirements for an authorized nuclear pharmacist in 10 CFR § 35.55(a) and § 35.59; or

(ii) is identified as an authorized nuclear pharmacist on:

(a) a specific license issued by the Nuclear Regulatory Commission or Agreement State that authorizes medical use or the practice of nuclear pharmacy;

(b) a permit issued by a Nuclear Regulatory Commission master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(c) a permit issued by a Nuclear Regulatory Commission or Agreement State broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

(d) a permit issued by a Nuclear Regulatory Commission master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(iii) is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(iv) was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material, and the individual practiced at a pharmacy at a federal government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the Nuclear Regulatory Commission.



(3) "Authorized user" means an individual who is authorized to practice medicine pursuant to Article 131 of the Education Law and:

(i) meets the applicable requirements in 10 CFR §§ 35.59 and 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.490(a), 35.590(a), or 35.690(a); or

(ii) is identified as an authorized user on:

(a) a Nuclear Regulatory Commission or Agreement State license that authorizes the medical use of byproduct material;

(b) a permit issued by a Nuclear Regulatory Commission master material licensee that is authorized to permit the medical use of byproduct material;

(c) a permit issued by a Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of byproduct material; or

(d) a permit issued by a Commission master material license broad scope permittee that is authorized to permit the medical use of byproduct material.

(4) "Medical use" means the intentional internal or external administration of byproduct material or the radiation from byproduct material to patients or human research subjects under the supervision of an authorized user.

(5) "Positron emission tomography facility" is a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

(6) "Prescribed dosage" means the specified activity or range of activity of unsealed byproduct material as documented in a written directive, or in accordance with the directions of the authorized user for procedures performed pursuant to 10 CFR §§ 35.100 and 35.200. Further details concerning this referenced code are contained in subdivision (c) of this section.

(7) "Prescribed dose" means:

(i) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(ii) for teletherapy, the total dose and dose per fraction as documented in the written directive;

(iii) for manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

(iv) for remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

(8) "Radiation safety officer" means an individual who:

(i) meets the requirements set forth in 10 CFR §§ 35.50(a) or (c)(1) and 35.59; or

(ii) is identified as a radiation safety officer on a specific medical use license issued by the Nuclear Regulatory Commission or Agreement State or a medical use permit issued by a Nuclear Regulatory Commission master material licensee.

(9) "Sealed source" means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

(10) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

(c) Approved medical uses of byproduct materials. A licensee may use byproduct materials on human beings for the particular uses set forth below, provided that the licensee meets all applicable requirements of this Part:

(1) Use of unsealed byproduct material for uptake, dilution and excretion studies;

(2) Use of unsealed byproduct material for imaging and localization studies;

(3) Use of unsealed byproduct material for which a written directive is required;

(4) Use of sources for manual brachytherapy;

(5) Use of sealed sources for diagnosis;

(6) Use of sealed source in a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit; or

(7) Other specific medical uses of byproduct material or radiation from byproduct material, as licensed by the Department.

(d) Federal standards. All licensees shall comply with the provisions of the following federal regulations, which are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein: Title 10 of the Code of Federal Regulations, Part 35, Medical Use of Byproduct Material. This code is published by the Office of the Federal Register National Archives and Records Administration. Copies may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington D.C. 20402. This code is available for copying and inspection at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. Notwithstanding any provision herein to the contrary, if a conflict occurs between the above referenced CFR and other provisions in this Part, compliance with the more restrictive regulation is required.

(e) General requirements applicable to all licensees authorized to use byproduct materials for medical purposes.

(1) Record Keeping Requirements. A licensee shall comply with all record keeping requirements set forth in Subpart L (Records) of Part 35 of 10 CFR. Further details concerning this referenced code are contained in subdivision (c) of this section.

(2) Reporting requirements: A licensee shall comply with all reporting requirements set forth in Subpart M (Reports) of Part 35 of 10 CFR as revised herein as follows: (i) in § 35.3045(c) and §35.3047(c), replace phrase "NRC Operations Center" with "Department"; (ii) in §35.3045(d) and § 35.3047(d), replace “By an appropriate method listed in § 30.6(a) of this chapter, the licensee shall submit a written report to the appropriate NRC Regional Office listed in § 30.6 of this chapter” with “shall submit a written report to the Department”; (iii) in § 35.3045(g)(1) and § 35.3047(f)(1), replace the term "NRC" with "Department"; and, (iv) in § 35.3067 replace “The report must be filed with the appropriate NRC Regional Office listed in § 30.6 of this chapter, by an appropriate method listed in § 30.6(a) of this chapter, with a copy to the Director, Office of Federal and State Materials and Environmental Management Programs.” with “The report shall be filed with the Department”.

(3) Training and experience requirements. A licensee shall ensure that all staff who are involved in the use of byproduct material pursuant to a specific license have the training and experience required by this Part.

(4) Other General Requirements. A licensee shall comply with requirements set forth in 10 CFR § 35.5, §35.6, §35.11(a)and (b), §35.24(b), (e), (f) and (g), §35.27, §35.40, §35.41, §35.49,

§35.60, §35.61, §35.63, §36.67, §35.69, §35.70, §35.75, §35.80, §35.92 as modified herein as follows: in § 35.27(a)(1) and (b)(1), replace “19.12 of this chapter” with “16.13(c) of this Part”.

(f) Requirements for the use of unsealed byproduct material for uptake, dilution and excretion studies. A licensee shall use unsealed byproduct material for uptake dilution and excretion studies only if authorized to do so by a specific license issued by the Department and provided that the licensee complies with 10 CFR §§ 35.100 and 35.190 and all applicable provisions of this Part.

(g) Requirements for the use of unsealed byproduct material for imaging and localization studies. A licensee shall use unsealed byproduct material for imaging and localization studies only if authorized to do so by a specific license issued by the Department and provided that the licensee complies with 10 CFR §§ 35.200, 35.204 and 35.290 and other applicable provisions of this Part.

(h) Requirements for the use of unsealed byproduct material for which a written directive is required. A licensee shall use unsealed byproduct material for which a written directive is required only if authorized to do so by a specific license issued by the Department and provided that the licensee complies with Subpart E (Unsealed Byproduct Material-Written Directive Required) of Part 35 of 10 CFR and other applicable provisions of this Part.

(i) Requirements for the use of sources for manual brachytherapy. A licensee may use sources for manual brachytherapy only if authorized to do so by a specific license issued by the Department

and provided that the licensee complies with Subpart F (Manual Brachytherapy) of Part 35 of 10 CFR.

(j) Requirements for the use of sealed sources for diagnosis. A licensee may use sealed sources for diagnosis only if authorized to do so by a specific license issued by the department and provided that the licensee complies with Subpart G (Sealed Sources for Diagnosis) of Part 35 of 10 CFR and other applicable provision of this Part.

(k) Use of sealed source in a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit. A licensee may use a sealed source in a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit only if authorized to so by a specific license issued by the department and provided that the licensee complies with Subpart H (Photon Emitting Remote Afterloader Units, Teletherapy Units and Gamma Stereotactic Radiosurgery Units) of Part 35 of 10 CFR and other applicable provisions of this Part.

(l) Other medical uses of byproduct material or radiation from byproduct material. A licensee may use byproduct material or a radiation source approved for medical use which is not specifically addressed in paragraphs 1 through 6 of subdivision (b) of this section if the licensee submits to the department information required by 10 CFR §35.12(b) through (d) and the licensee has received written approval from the Department in a specific license or license amendment and uses the material in accordance with specific conditions that the department deems necessary or desirable for the safest medical use of the material.

(m) General Use License. Any licensee who is licensed for one or more of the types of medical uses specified in paragraphs (1) through (6) of subdivision (b) of this section also is authorized to use radioactive material under the general license in Appendix 16-A, Table 6, Item (i) *infra*, for the specified "in vitro" uses without filing Form GEN 373 as required by Appendix 16-A, Table 6, Item (i), subdivision (2), *infra*, provided, however, that the licensee is subject to the other provisions of Appendix 16-A, Table 6, Item (i), *infra*.





## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council is authorized by § 225(4) of the Public Health Law (PHL) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL §§ 225(5)(p) and (q) and 201(1)(r) authorize the Commissioner to promulgate SSC regulations to protect the public from the adverse effects of ionizing radiation. Pursuant to these regulations, as set forth in 10 NYCRR Part 16, the Department of Health (Department), licenses or registers health care providers to use radioactive materials and ionizing radiation emitting equipment on patients.

The federal Atomic Energy Act of 1954 (the Act), codified at 42 USC §§ 2021, et. seq. authorizes the United States Nuclear Regulatory Commission (NRC) to regulate the use of radioactive materials. The Act also authorizes "Agreement States" to regulate the use of radioactive materials in lieu of the NRC, provided that the "Agreement State" promulgates regulations that are comparable to or exceed NRC's regulatory standards. New York State is an "Agreement State" within the meaning of the Act. New York's regulatory standards for the use of radioactive materials in 10 NYCRR Part 16 must therefore meet or exceed comparable NRC regulatory standards. The Act governs only to the use of radioactive materials; it does not apply to x-rays or radiation therapy equipment that emit only x-rays.

**Legislative Objectives:**

The legislative intent of PHL §§ 225(5) and 201(1)(p) and (q) is to protect the public from the adverse effects of ionizing radiation. Promulgating regulations to ensure safe and effective clinical uses of radioactive material and radiation producing equipment is consistent with this legislative objective.

**Needs and Benefits:**

The NRC has relinquished its authority to regulate the use of radioactive materials in New York State to the Department. The Act requires New York to adopt and enforce regulatory standards for the use of radioactive materials that are comparable to or exceed federal regulatory standards that apply to the use of radioactive materials. The Department regulates the use of radioactive material at approximately 1100 facilities, including approximately 450 health care facilities. The Department's regulations are designed to require the delivery of quality care while protecting people and the environment from the harmful effects of radiation. In order to ensure that New York retains its authority under federal law to regulate the use of radioactive material, the Department's regulations must be amended to conform more closely to current federal regulatory standards. The proposed regulations incorporate by reference many of the NRC regulatory standards that govern the medical use of radioactive materials. In areas where the NRC regulations are not incorporated, the Department has promulgated comparable regulations.

In recent years, technology and equipment used to deliver radiation therapy to cancer patients, including systems used to plan and execute radiation therapy treatment, have become significantly more complex. Recently developed radiation therapy systems more effectively

deliver high dose rate treatments to precisely defined three-dimensional tumor volumes while sparing dose to healthy tissue. Patients benefit significantly when, as is the case in the vast majority of such radiation treatments, the dose is delivered as intended. However, radiation treatment errors can cause serious consequences for patients and in extreme cases, death. An analysis of the causes of medical adverse events (radiation therapy misadministrations) reported to the Department within the past eight years has identified common errors and causes of errors that may be preventable with the implementation of more comprehensive quality assurance programs. When the current regulations for quality assurance for external beam and brachytherapy were implemented in 1993, radiation therapy equipment was much simpler in design and function, and there were fewer units in service. Most radiation therapy treatments were delivered in a hospital setting. Today there are greater numbers of patients receiving radiation therapy, and more patients are treated in freestanding radiation therapy centers. There are more medical therapy accelerators in use. Newer radiation treatment systems are very complex; these systems rely on computer networks and electronic data storage and movement. DOH regulates approximately 120 medical facilities that provide radiation therapy. The current regulations need to be revised to effectively address quality assurance requirements for newer systems, to ensure implementation of strategies to prevent the occurrence of misadministrations and ensure those facilities meet current standards of care.

**Costs:**

The Department estimates that regulated parties that use radioactive materials will not incur any additional costs in order to comply with the proposed changes to 10 NYCRR § 16.123. In most instances, the proposed regulatory amendments will reduce costs and regulatory burdens for

physicians who are required to qualify as "authorized users" of radioactive materials for diagnostic purposes. The current section requires 200 hours of classroom training. By removing this requirement and incorporating the federal classroom training requirements set forth in 10 CFR Part 35, the required classroom and laboratory training hours will be reduced to 80 hours for physicians applying for authorized user status for diagnostic uses. In addition, these physicians would be allowed to obtain the practical training component in a private medical practice setting. Currently such training can be obtained only at a medical institution (hospital). By incorporating the training requirements established in 10 CFR Part 35, the total number of training hours for physicians who use radioactive materials will remain at 700 hours.

This will result in lower costs for classroom training (tuition/course fee) and associated travel/lodging expenses, and will reduce the time a physician would be away from his/her clinical practice to obtain the required classroom training. The current regulations specify that such training must be obtained at a medical institution, or hospital. However, under the training requirements established in 10 CRF Part 35, which will be incorporated by the new regulation, physicians will have the option to obtain the required work experience portion of the training (620 hours) at non-institutional facilities. Costs associated with complying with the quality assurance testing for therapeutic devices, including high-dose rate brachytherapy and teletherapy should not increase or change, because the current license conditions contain these same quality assurance requirements.

The Department estimates that the cost to regulated parties that use external beam therapy or manual brachytherapy to comply with proposed 10 NYCRR § 16.24 will be limited to the fee to

become accredited in radiation oncology by either the American College of Radiology (ACR), the American College of Radiation Oncology (ACRO) or an equivalent organization as approved by the Department. The cost for accreditation is approximately \$9,500 for each three-year period. However, approximately half of the affected regulated parties are either currently accredited or have an application pending with ACR or ACRO on their own accord. Many that are not accredited use the services of outside radiation oncologists and medical physicists to audit their radiation therapy quality assurance program on an annual basis. The costs for annual outside audits are estimated to cost several thousands of dollars. The proposed regulation would remove the need for outside audits, although they could be conducted to meet the requirement for an annual audit. Under the proposed rule, either an internal or an external audit may be used to fulfill the annual audit requirement. Costs saved by elimination of the requirement for outside audits are expected to offset a portion of the costs that will be incurred for accreditation. The other proposed changes to 10 NYCRR § 16.24 will impose very little or no cost to regulated parties since existing facility staff can comply with the new quality assurance requirements.

**Local Government Mandates:**

These proposed regulations apply to two State University hospitals, a Department operated hospital and hospitals operated by public benefit corporations. These hospitals are currently accredited by the ACR. No other additional costs are associated with implementation of these requirements. Registrants and licensees, including the hospitals operated by state and local governments, are currently required to retain all quality assurance documents for review by the department. The additional records and filing is estimated to be a small incremental amount. Affected parties will need to complete an application for accreditation initially and every three

years thereafter. The radiation oncology accrediting bodies are transitioning to an on-line application process to minimize time and effort for parties seeking accreditation.

**Paperwork:**

Department regulations (10 NYCRR Part 16) require registrants and licensees to maintain a variety of records relating to the use of ionizing radiation for review by the Department. The Department estimates that licensees and registrants may have a small amount of additional documentation to create, maintain or file. Affected parties will have to complete an application for radiation oncology accreditation. However, the accrediting bodies are transitioning to an online application process to minimize time and effort for regulated parties seeking accreditation.

The proposed regulations will not affect license documents issued by the Department to current licensees, registrants or authorized users. The Department plans to provide updated license guidance to new applicants to facilitate completion of an application based on the new requirements.

**Duplication:**

There is no duplication of the proposed regulatory requirements by any federal, state or local agency for licensees, registrants or authorized users subject to 10 NYCRR Part 16. New York State entered into an agreement with the federal government on October 15, 1962, by which the federal government discontinued its regulatory authority over the use of radioactive materials and New York assumed such authority. The Atomic Energy Act does not govern use of x-ray emitting equipment.

**Alternatives:**

There are no suitable alternatives to the revisions to these proposed regulations. As discussed above, the Atomic Energy Act (42 USC § 2021 et. seq.) requires Agreement States such as New York to adopt and implement regulatory standards that meet or exceed comparable federal standards.

**Federal Standards:**

These proposed revisions to 10 NYCRR §16.123 incorporate by reference certain federal requirements specified in 10 CFR Part 35.

**Compliance Schedule:**

The proposed regulatory amendments will be effective upon publication of a Notice of Adoption in the State Register. However, proposed 10 NYCRR §16.24(a)(6) requires that licensees and registrants apply for accreditation in radiation oncology with the American College of Radiology or the American College of Radiation Oncology or another accrediting organization approved by the Department within 90 days of the regulation's effective date and to become accredited and maintain such accreditation within 18 months of such effective date.

**Contact Person:**

Katherine Ceroalo  
New York State Department of Health  
Bureau of House Counsel, Regulatory Affairs Unit  
Corning Tower Building, Rm. 2438  
Empire State Plaza  
Albany, New York 12237



(518) 473-7488

(518) 473-2019 (FAX)

[REGSQNA@health.state.ny.us](mailto:REGSQNA@health.state.ny.us)

## **Regulatory Flexibility Analysis for Small Businesses and Local Governments**

### **Effect on Small Business:**

The Department has issued radioactive materials licenses to approximately 350 private medical practices. These licensees would be affected by the proposed revisions to 10 NYCRR §16.123.

The Department estimates that there will be no new costs for these licensees and in some instances, regulated parties may save money by complying with the updated standards in proposed 10 NCR §16.123. The Department expects the cost to comply with the new training and experience requirements for physicians who wish to become authorized for certain medical uses will be reduced in most situations. Specifically the required classroom and laboratory training hours will be reduced from 200 to 80 hours for physicians applying for authorized user status for diagnostic uses. The total number of training hours will remain at 700 hours. This will result in lower costs for classroom training (tuition/course fee) and associated travel/lodging expenses, and will reduce the time a physician would be away from his/her clinical practice to obtain the required classroom training. Physicians will have the option to obtain the required work experience portion of the training (620 hours) at non-institutional facilities. The current requirements specify that such training must be obtained at a medical institution (hospital).

The proposed changes to 10 NYCRR §16.24 would apply to approximately 60 medical private practices. The draft proposed rule was sent to all medical therapy accelerator facilities, including the small businesses (non-institutions) for comments. One facility manager stated that they support the accreditation requirement although it can be a hardship to practices like hers.

However the manager's facility was already accredited and has application pending to maintain accreditation. No other facility expressed any anticipated hardship with the proposed rule.

**Compliance Requirements:**

Licensees and applicants will need to become familiar with the new requirements and modify their quality assurance policies and procedures accordingly. Those who are not currently accredited will need to do so within 18 months of the effective date of the rule.

**Professional Services:**

The vast majority of facilities have in-house staff that perform quality assurance testing and operate radiation emitting technology. The Department does not expect that it would be necessary for licensees to use additional professional services for completion of applications for accreditation or to implement the quality assurance requirements.

**Capital Costs and Annual Costs of Compliance:**

The amortized annual cost is estimated to be approximately \$3,200 per year for accreditation (based on a three-year accreditation cost of \$9,500). However, approximately 50 percent of the facilities are either currently accredited or have an application for accreditation pending; therefore, they will not incur any additional costs. There are no capital costs associated with this regulation.

**Economic and Technology Feasibility**

There are no capital costs or new technology required to comply with the proposed rule.

**Minimizing Adverse Impact:**

Facilities will have 90 days to apply and 18 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee. The Department has held several discussions with the proposed accrediting bodies, and has accompanied their auditors during accreditation surveys. These interactions were conducted to ensure that the bodies have the capacity to handle an influx of applications for accreditation and that the organizations operate in a professional and constructive manner, have an efficient process, and have an overall effect of improving patient safety. Further the requirement for external annual audits was eliminated which would offset the cost of accreditation.

**Small Business Input:**

A copy of the draft proposed rule was sent to all medical therapy accelerator facilities, which includes both private practices and hospital-based radiation therapy treatment clinics. Seven facilities submitted comments. Only one commenter addressed the cost for accreditation, however, she stated that she supports the accreditation requirement. Several comments were in regard to clarification on a few aspects of the proposed language. Guidance, which will assist the affected facilities in implementation and compliance with the new requirements, will be developed and provided to affected facilities.

## **Rural Area Flexibility Analysis**

### **Types and Estimated Numbers of Rural Areas:**

There are 105 affected facilities located in 46 rural areas (33 counties with a population of less than 200,000 and 13 counties with certain townships with a population density of more than 150 persons per square mile).

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

There are no new reporting requirements contained in the proposed regulations. No additional professional service costs are anticipated. Facilities will be required to maintain records of quality assurance test results and accreditation documents for review by the Department's inspectors. Compliance with the recordkeeping requirements will require only a minor incremental amount of time and effort for affected facilities.

### **Cost:**

The cost to comply with the accreditation requirement will be approximately \$9,500 every three years. This will affect approximately 50 percent of the facilities that will be subject to the proposed 10 NYCRR §16.24(e), because approximately 50 percent of the facilities are either currently accredited or have an application for accreditation pending. Facilities that are currently accredited or have an application pending have done so in part to satisfy the current audit requirements in section 16.24. Such facilities have selected the option to conduct annual internal audits (by in-house staff) and have periodic audits performed by the ACR or ACRO. Such facilities will not effectively see an increase in their operating budgets to comply with the new

accreditation requirement as they have already chosen to become accredited and have budgeted for the associated cost.

**Minimizing Adverse Impact:**

Facilities will have 18 months to become accredited. This will allow a facility adequate time to select the accreditation body of their choice, complete an application and budget funds for the accreditation fee. The Department has held several discussions with the proposed accrediting bodies, and has accompanied their auditors during accreditation surveys. These interactions were conducted to ensure that the bodies have the capacity to handle an influx of applications for accreditation and that the organizations operate in a professional and constructive manner, have an efficient process, and have an overall effect of improving patient safety.

**Rural Area Participation:**

A copy of a draft proposed rule was sent to all medical therapy accelerator facilities, which includes both private practices and hospital-based radiation therapy treatment clinics. Seven facilities commented. One commenter addressed the cost for accreditation but indicated they understood the value of accreditation. A few commenters requested minor clarification on a few aspects of the proposed language.

## **Job Impact Statement**

### **Nature of Impact:**

It is anticipated that no jobs will be adversely affected by this rule. Radiation therapy providers in New York will need to become familiar with and implement the new regulatory requirements set forth in proposed 10 NYCRR §16.24. The proposed regulations do not significantly change the training or experience requirements of radiation therapy facility staff. Medical providers authorized to use radioactive materials would need to become familiar with and implement the new regulatory requirements set forth in proposed 10 NYCRR §16.123. The Department anticipates that few if any persons will be adversely affected. Licensee staff, specifically those designated as the radiation safety officer, medical physicist, nuclear pharmacist, and authorized user will need to become familiar with the new requirements.

### **Categories and Numbers Affected:**

There are approximately 120 radiation therapy facilities that would be subject to the rule. Half of these are hospitals or their satellite facilities, and the other half are non-institutional entities. There are approximately 450 medical use of radioactive materials licensees.

### **Regions of Adverse Impact:**

No areas will be adversely affected.

**Minimizing Adverse Impact:**

There are no alternatives to the proposed regulations. The Department will revise guidance to assist all licensees, including those in rural areas, with implementation of the proposed regulations.

**Self-Employment Opportunities:**

The rule is expected to have minimal impact on self-employment opportunities since the majority of providers that will be affected by the rule are not sole proprietorships.



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

**December 6, 2012**

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

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

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

**CON Applications**

**Acute Care Services – Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122055 C	Erie County Medical Center (Erie County) Mr. Booth - Interest	Contingent Approval

**Ambulatory Surgery Center – Construction**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122032 C	Corning Hospital (Chemung County) Mr. Booth - Interest	Contingent Approval

**Residential Health Care Facilities – Construction**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121466 C	Long Island State Veterans Home (Suffolk County) Mr. Fassler – Interest	Contingent Approval

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

**Exhibit #6**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 122050 C	Lutheran Augustana Center for Extended Care & Rehabilitation, Inc. (Kings County) Mr. Fassler - Interest	Contingent Approval

**Dialysis Services - Construction**

**Exhibit #7**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 121230 C	New York Dialysis Services, Inc. d/b/a FMS – Southern Manhattan Dialysis Center (Wayne County) Mr. Booth – Interest	Contingent Approval

**Certified Home Health Agency – Construction**

**Exhibit #8**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 121248 C	Elderserve Long Term Health Care (Westchester County) Mr. Fassler - Interest	Contingent Approval



# Public Health and Health Planning Council

## Project # 122055-C Erie County Medical Center

**County:** Erie (Buffalo)  
**Purpose:** Construction

**Program:** Acute Care Services  
**Submitted:** August 2, 2012

### Executive Summary

#### Description

Erie County Medical Center, a 550-bed public hospital, requests approval to consolidate the inpatient psychiatric and rehabilitation/detoxification units of Erie County Medical Center Corporation and Kaleida's Buffalo General Medical Center (BGMC), by creating a Regional Behavior Health Center for Western New York. The goal of this project is to eliminate duplicative capacity and gain operational efficiencies, while providing lower cost care and improving outcomes for the 1.5 million residents of Western New York. Specifically, the project seeks to:

- Create a new 36,350 SF, Comprehensive Psychiatric Emergency Program and Outpatient Behavioral Health Facility as a component of the Consolidated Center of Excellence at Erie County Medical Center, located at 462 Grider Street, Buffalo. The project will expand the existing CPEP facility at ECMC from 6,500 SF to 16,000 SF to accommodate an estimated 13,000 patients annually.
- Consolidate the community-based outpatient behavioral health programs of ECMC and Kaleida Health into the Centers of Excellence as appropriate to eliminate duplicative services, create operational efficiencies, and to promote cost effective and quality patient care.
- Combine the current outpatient volumes of ECMC with 44,300 annual visits, and Kaleida Health with 69,829 annual visits with services provided onsite at ECMC and at community-based locations. Kaleida Health's 1010 Main Street and Lancaster Outpatient Clinic will remain in current locations, but ownership will transfer to ECMCC at no cost.
- Consolidate the inpatient psychiatric and rehabilitation/detoxification units of ECMC and Kaleida's Buffalo General Hospital to reduce excess capacity and create a 180-bed Center of Excellence for Inpatient Behavioral Health Services at ECMC. The consolidation will result in the certification of 48 adult psychiatric beds and the

decertification of 15 inpatient chemical dependency rehabilitation beds from ECMC. Kaleida Health's inpatient psychiatric beds (91) will be transferred over to ECMC. ECMC will take ownership. In this process, 43 psychiatric beds will be decertified.

Total project costs are estimated at \$25,437,195.

DOH Recommendation  
Contingent approval.

#### Need Summary

BGMC, which currently has 461 beds, will have 370 beds upon completion of this project. Via CON #091009-C, the hospital is currently constructing an additional 87 beds, which will result in a total certified bed capacity for BGMC of 457. ECMCC currently has 550 beds and will have 583 beds after the completion of this project.

#### 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 ECMCC equity of \$5,233,810, Kaleida Health equity of \$5,203,385, and a HEAL-NY Phase 21 grant of \$15,000,000.

Budget:	<i>Revenues:</i>	\$ 78,296,000
	<i>Expenses:</i>	54,226,000
	<i>Gain/(Loss):</i>	\$ 24,070,000

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 approval by the Commissioner of the Office of Mental Health after considering the deliberations of the New York State Mental Health Services Council. [PMU]
3. Submission of an executed transfer agreement of the operations of the 1010 Main Street Site and the Lancaster Outpatient Clinic from Kaleida Health to ECMCC that is acceptable to the Department of Health. [BFA]
4. Submission of an executed HEAL 21 grant contract that is acceptable to the Department of Health. [BFA]
5. Submission of executed lease for the 1010 Main Street Site and the Lancaster Outpatient Clinic site that is acceptable to the Department of Health. [BFA]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-01. [AES]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

Erie County Medical Center (ECMC) is a 550-bed acute care hospital located at 462 Grider Street, Buffalo, in Erie County. The hospital seeks to consolidate the inpatient psychiatric and rehabilitation/detoxification units of ECMC and Kaleida's Buffalo General Medical Center (BGMC) by creating a Regional Behavior Health Center for Western New York.

Erie County Medical Center, as lead applicant and in partnership with Kaleida Health (Kaleida) under the auspices of Great Lakes Health System of Western New York (GLH), was approved for a \$15 million award through HEAL-NY, Phase 21, Restructuring Initiatives in Medicaid Redesign, to create a Regional Behavioral Health Center of Excellence for Western New York.

### Analysis

Total certified bed capacities of Buffalo General Medical Center and Erie County Medical Center are shown below in Tables 1 and 1a:

<b>Table 1: Buffalo General Medical Center Certified Bed Capacity</b>						
<i>Bed Category</i>	<i>Certified Bed Capacity</i>	<i>CON #091109</i>	<i>Certified Bed Capacity After CON #091109</i>	<i>ECMC CON # 122055</i>	<i>Certified Bed Capacity After ECMC's CON #122055</i>	<i>Transfer to ECMC CON #122055</i>
Coronary Care	18	+11	29		29	
Intensive Care	48	+5	53		53	
Medical / Surgical	260	+87	347		347	
Physical Medicine and Rehabilitation	28		28		28	
Psychiatric	107	-16	91	-91	0	48
<i>Total</i>	<i>461</i>	<i>87</i>	<i>548</i>	<i>-91</i>	<i>457</i>	<i>48</i>

<b>Table 1a: Erie County Medical Center Certified Bed Capacity</b>			
<i>Bed Category</i>	<i>Certified Capacity</i>	<i>Requested Action</i>	<i>Certified Capacity Upon Completion</i>
Burns Care	8		8
Chemical Dependence - Rehabilitation	35	-15	20
Chemical Dependence - Detoxification	22		22
Coronary Care	12		12
Intensive Care	34		34
Medical / Surgical	239		239
Pediatric	8		8
Physical Medicine and Rehabilitation	40		40
Prisoner	20		20
Psychiatric	132	+48*	132
<i>Total</i>	<i>550</i>	<i>+33</i>	<i>583</i>

\* Transferred from Buffalo General Medical Center.

ECMC is authorized to operate four (4) hospital extension clinics providing services such as Nursing, Primary Medical Care O/P and Chemical Dependence - Rehabilitation O/P. In addition to the hospital extension clinics, the applicant also operates two (2) residential health care facilities.

The two hospitals also have the following state designations:

Erie County Medical Center

- AIDS Center
- Burn Center
- Regional Trauma Center
- SAFE Center
- Stroke Center

Buffalo General Medical Center

- SAFE Center

In order to create a Regional Behavioral Health Center of Excellence for WNY the applicant will:

- Create a new state-of-the-art, Comprehensive Psychiatric Emergency Program (CPEP);
- Expand the CPEP to accommodate an estimated 13,000 patients annually;
- Operate an Outpatient Behavioral Health facility as a component of the consolidated Center of Excellence at ECMC (located at 462 Grider Street, Buffalo);
- Consolidate the community-based outpatient behavioral health programs of ECMC and Kaleida into the Center of Excellence in order to eliminate duplicative services and create operational efficiencies;
- Assure continued patient accessibility and retention, and promote cost effective and quality patient care; and
- Consolidate the inpatient psychiatric and rehabilitation/detoxification units of ECMC and Kaleida's BGMC to reduce excess capacity; and
- Create a state-of-the-art 180 bed Center of Excellence for Inpatient Behavioral Health Services at ECMC resulting in the decertification of 43 adult psychiatric beds at BGMC, the transfer of 48 of the remaining beds to ECMC and the decertification of 15 inpatient chemical dependency rehabilitation beds at ECMC.

Kaleida Health's 1010 Main Street and Lancaster outpatient Clinic will remain in their current locations but the ownership will be transferred to ECMC.

The integrated model will combine the current outpatient volumes of ECMC with Kaleida's and the services will be provided onsite at ECMC.

Utilization

In 2008, combined, ECMC and BGH recorded 4,890 general psychiatric inpatient discharges. By 2009, these discharges declined by more than 200 to 4,606, then rebounded to 4,748 in 2010. The combined average daily census (ADC) in 2008 was 187 patients on any given day. It dropped to 165 and 168 patients on any given day in 2009 and 2010, respectively.

During the period under review, both facilities exhibited individual psychiatric occupancy rates of 80 percent or less. This project proposes to reduce the psychiatric inpatient capacity of the two hospitals by approximately 25 percent, from a total of 239 beds to 180 beds. The recalculation of the facilities' combined inpatient psychiatric utilization based on the proposed 180 beds show that the beds would have been more than 100 percent occupied in 2008 and optimally utilized in 2009 and 2010, respectively (Table 2).

In addition to the consolidation of inpatient psychiatric beds, ECMC also proposes to reduce its inpatient major service category chemical dependency (CD) capacity by 26.3 percent, from 57-beds to 42-beds. In 2008, ECMC recorded 1,894 CD discharges. By 2010, these discharges declined by 10.6 percent, to 1,694. The associated ADC for the period averaged about 40 patients on any given day, for an average occupancy rate of 70.8 percent. Based on its historical CD utilization, ECMC's revised CD averaged occupancy rate with the proposed 42 beds would be about 95.0 percent; thus resulting in a bed/unit configuration with optimal utilization.

<b>Table 2: Buffalo General Medical Center and Erie County Medical Center: Major Service Category Psychiatric Inpatient Utilization</b>					
<i>Hospital</i>	<i>Service Category</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>Current and revised Beds</i>
		<b>Discharges</b>			
Buffalo General	General Psychiatric	2,345	2,358	2,486	
ECMC	General Psychiatric	2,545	2,248	2,262	
	Combined	4,890	4,606	4,748	
		<b>Average Daily Census</b>			
Buffalo General	General Psychiatric	82	84	86	
ECMC	General Psychiatric	105	81	82	
	Combined	187	165	168	
		<b>Occupancy Based on Current and Revised Beds (%)</b>			
Buffalo General	General Psychiatric	76.6	78.9	80.6	107
ECMC	General Psychiatric	79.6	61.6	61.7	132
	Combined (revised occupancy)	103.9	91.7	93.3	180

Source: SPARCS 2008 – 2010

#### Conclusion

Erie County Medical Center and Buffalo General Medical Center seek CON approval to consolidate emergency, outpatient, and inpatient behavioral health services at ECMC campus in order to eliminate duplicative capacity and gain operational efficiencies for the residents of Western New York. Analysis of the utilization data at both facilities indicates that the new configuration of beds and services will have the capacity to meet the current behavioral health needs of the residents of Western New York and result in optimal uses of these resources.

#### Recommendation

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

## Programmatic Analysis

#### Background

Erie County Medical Center (ECMC) is proposing the creation of a Regional Behavioral Health Center of Excellence for Western New York through the consolidation and right-sizing of ECMC's and Kaleida Health's emergency, outpatient and inpatient behavior health services to ECMC. This involves the construction of a Center of Excellence to be located at ECMC, the decertification of beds by Kaleida, the conversion and addition of certified beds by ECMC and the change in ownership of two Kaleida outpatient clinics to ECMC.

#### 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 Agreements

The applicant has provided draft leases for the 1010 Main Street Site and the Lancaster Outpatient Clinic Site, which is summarized below:

### Sublease Agreement

#### 1010 Main Street Site

*Premises:* 34,395 sq. ft. located at 1010 Main Street Site, Buffalo, New York  
*Sublessor:* Kaleida Health  
*Sublessee:* Erie County Medical Center Corporation (ECMCC)  
*Term:* Twelve years  
*Rental:* Annual Rent of \$613,644 (\$17.34 per sq. ft.)  
*Provisions:* The sub lessee shall be responsible for taxes and maintenance.

#### Lancaster Outpatient Clinic Site

*Premises:* 5,500 square feet located at Broadway Commons, Broadway, Depew, New York  
*Lessor:* Bro-Pen Associates, LLC  
*Lessee:* Kaleida Health  
*Term:* 10 years  
*Rental:* \$93,500 annually (\$17.00 per sq. ft.)  
*Provisions:* The lessee shall be responsible for taxes, utilities and maintenance.

The applicant has indicated that both leases will be an arms length lease arrangement.

## Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment, is estimated at \$25,437,195, itemized below:

New Construction	\$8,766,931
Renovation and Demolition	7,692,459
Sited Development	728,000
Asbestos Abatement or Removal	232,201
Design Contingency	1,741,959
Construction Contingency	1,243,992
Architect/Engineering Fees	1,531,012
Construction Manager Fees	670,654
Other Fees (Consultant)	47,189
Moveable Equipment	2,641,670
CON Fee	2,000
Additional Processing Fee	139,128
Total Project Cost	\$25,437,195

Project costs are based on a January 1, 2013 construction start date and a twenty month construction period.

The applicant's financing plan appears as follows:

Equity (ECMCC)	\$5,233,810
HEAL 21 Grant Funds	15,000,000
Equity (Kaleida Health)	5,203,385



Operating Budget

The applicant has submitted an operating budget, in 2012 dollars based on the total operation of the Regional Behavior Health Center, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues*	\$75,601,000	\$78,296,000
Expenses:		
Operating	\$48,869,000	\$52,063,000
Capital	<u>2,046,000</u>	<u>2,163,000</u>
Total Expenses	\$50,915,000	\$54,226,000
Excess of Revenues over Expenses	\$24,686,000	\$24,070,000
Utilization:		
Discharges	6,542	6,500
Visits	115,656	118,098

*\*Revenues include \$14,350,000 of other operating revenues, which includes disproportionate share revenue, professional billings, GME and Grants and Other.*

Expense and utilization assumptions are based on the historical experience of ECMCC and Kaleida Health.

Inpatient (Discharges) broken down by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	34.95%	29.70%
Medicaid Managed Care	16.69%	21.01%
Medicare Fee-for-Service	19.49%	19.23%
Medicare Managed Care	4.57%	5.03%
Commercial Fee-for-Service	3.91%	4.03%
Commercial Managed Care	14.00%	14.41%
Private Pay	4.89%	5.04%
Other	1.50%	1.55%

Outpatient (Visits) broken down by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	36.22%	35.24%
Medicaid Managed Care	27.38%	29.03%
Medicare Fee-for-Service	8.08%	8.28%
Medicare Managed Care	4.21%	3.71%
Commercial Fee-for-Service	.65%	.65%
Commercial Managed Care	18.01%	15.77%
Private Pay	5.21%	6.79%
Other	.24%	.53%

Capability and Feasibility

Project costs of \$25,437,195 will be met as follows: Equity (ECMCC) of \$5,233,810, HEAL 21 Grant Funds of \$15,000,000, and Equity (Kaleida Health) of \$5,203,385.

The submitted budget indicates a net income of \$24,686,000 and \$24,070,000 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budget appears reasonable.

As shown on Attachment A, Kaleida Health had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, Kaleida Health incurred an average excess of revenues over expenses of (\$647,000) from 2010 through 2011. The applicant has indicated that the reason for the 2011 loss is the result of the following: the area has seen a significant downturn in inpatient volume since the third quarter of 2010, and continuing through 2011, and has had continued lower reimbursement rates from Medicaid and Medicare. The applicant has initiated the following improvements to improve operations: productivity improvements, labor cost control, portfolio/service line review and reductions, corporate and fixed cost review, and reductions and community benefit analysis.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of Erie County Medical Center Corporation. As shown on Attachment B, the entity had an average positive working capital position and an average positive net asset position from 2010 through 2011. Also, the entity achieved an average operating income of \$8,192,000 from 2010 through 2011.

Presented as BFA Attachment C, is the August 31, 2012 internal financial statements of Kaleida Health. As shown, the entity had a positive working capital position and a positive net asset position through August 31, 2012. Also, the entity achieved an excess of revenues over expenses of \$28,773,000 through August 31, 2012.

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 Kaleida Health.
BFA Attachment B	Financial Summary for Erie County Medical Center Corporation.
BFA Attachment C	August 31, 2012 internal financial statements of Kaleida Health



# Public Health and Health Planning Council

Project # 122032-C  
**Corning Hospital**

**County: Chemung (Horseheads)**  
**Purpose: Construction**

**Program: Acute Care Services**  
**Submitted: July 20, 2012**

## Executive Summary

### Description

Corning Hospital (CH), an existing 99-bed voluntary hospital located at 176 Denison Parkway East, Corning, requests approval to certify Guthrie Same Day Surgery Center, Inc. (GSDS), a multi-specialty ambulatory surgery, as an extension clinic of the hospital. The proposed extension clinic will be called the Corning Hospital Surgery Center.

The extension clinic will be located in leased space approximately five miles from the site of the new, to-be-constructed hospital, and 9 miles from the existing hospital. This extension clinic will occupy space that is currently serving as the site of GSDS, at 31 Arnot Road, Horseheads (Chemung County). GSDS is an existing Article 28 D&TC, and is certified as a multi-specialty freestanding ambulatory surgery center (ASC) with two operating rooms and two procedure rooms. The applicant and GSDS have the same sole corporate member and active parent, which is Guthrie Healthcare Systems (GHS). This is therefore a related-party transaction.

The purpose of this CON is to make the operations at the site more financially stable, as GSDS has been losing money each year since operations began and GHS has had to cover those losses. By having this FASC become part of the hospital's operations, it is believed it will become more financially stable due to the prevention of duplication, and through identification of the best utilization of services at specific sites based on community need in correlation with fiscal accountability.

It is planned for GSDS to close operations one business day, with the site reopening the next business day as an extension clinic of CH.

Only the current moveable equipment will be transferred to the new extension clinic and will be leased from GSDS. GSDS will retain accounts receivable as it winds down operations at the site, and GHS will assume GSDS's existing debt. CH is not acquiring the business of GSDS.

**DOH Recommendation**  
Contingent approval.

**Need Summary**  
The current volume of over 3,000 cases per year at GSDS indicates that the facility is meeting a need for ambulatory surgery services in the service area.

**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**  
There are no project costs associated with this proposal.

Budget:	<i>Revenues:</i>	\$ 4,868,900
	<i>Expenses:</i>	<u>2,468,975</u>
	<i>Gain/Loss:</i>	\$ 2,399,925

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

The Finger Lakes HSA recommends approval of this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of an executed building sub lease that is acceptable to the Department of Health. [BFA]
2. Submission of an executed movable equipment lease that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

Guthrie Same Day Surgery Center, Inc. (GSDS) is an existing Article 28 diagnostic and treatment center certified as a multi-specialty freestanding ambulatory surgery center (ASC), with two operating rooms and two procedure rooms. GSDS opened in 2002 and is a not-for-profit corporation whose sole corporate member and active parent is Guthrie Health System (GHS). GHS is also the sole corporate member and active parent of Corning Hospital.

The to-be-named Corning Hospital Surgery Center will be fully integrated with Corning Hospital as an extension clinic. It is projected that there will be 3,407 visits in year one and year three.

### Analysis

Corning Hospital's service area includes 23 zip codes in Steuben County and the western portions of Schuyler and Chemung Counties.

Corning Hospital Surgery Center is five miles from the new Corning Hospital site and nine miles from the existing Corning Hospital site.

The number of projected visits is as follows:

First Year:	3,407
Third Year:	3,407

Chemung County has one other free-standing ambulatory surgery center, the Elmira Ambulatory Surgery Center, which is certified for single specialty-ophthalmology. There are no free-standing ambulatory surgery centers in Steuben and Schuyler Counties.

The type of ambulatory surgery service and number of cases performed at the centers are listed below:

<b>Existing Free-Standing Ambulatory Surgery Centers: Chemung County</b>			
<i>Type</i>	<i>Name</i>	<i>2010</i>	<i>2011</i>
Ophthalmology	Elmira ASC	2,024	2008
Multi Specialty	Guthrie Same Day Surgery Center	2,794	3,067
<i>Total</i>		<i>4,818</i>	<i>5,075</i>

*Source: SPARCS 2010 – 2011*

### Conclusion

The current volume of over 3,000 cases per year at the Guthrie Same Day Surgery Center indicates that the facility is meeting a need for ambulatory surgery services in the service area.

From a need perspective, approval of the proposed certification of the current GSDS site is an extension clinic of Corning Hospital and its operation as the Corning Hospital Surgery Center is recommended.

### Recommendation

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

## Programmatic Analysis

### Background

Corning Hospital requests approval to take over the site of an operational multi-specialty free standing ambulatory surgery center and operate it as an extension clinic. The Center is currently operated by Guthrie Same Day Surgery Center, Inc., which is part of the same health care system as the hospital.

There will be no changes to staffing or services at the Center upon 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**

Real Property Lease

The applicant will occupy the existing leasehold of approximately 8,445 square feet under the terms of the draft agreement summarized below:

<i>Lessor:</i>	David A Lubin and David A. Lubin and Mark A. Weiermiller as trustees of the Barbara Carkeet Irrevocable trust and as Trustees of the Enid Lubin Littman Irrevocable Trust
<i>Lessee/Original</i>	Guthrie Big Flats Ambulatory Surgery Center, LLC
<i>Lessee/Current:</i>	Guthrie Same Day Surgery Center, Inc.
<i>Lessee/Successor:</i>	Corning Hospital
<i>Term:</i>	Original terms 20 years from February 25 <sup>th</sup> , 1999
<i>Rental:</i>	\$10,881.72 per month or (\$130,580.64 per year) or (\$15.46 per sq. ft.)
<i>Provisions:</i>	The lessee shall be responsible for its proportionate share of real estate taxes, maintenance and utilities.
<i>Type:</i>	Arms-Length

The applicant has submitted an affidavit indicating that the lease arrangement will be an arm's length lease arrangement, since there is no relationship between the landlord and the tenant.

Movable Equipment Lease

The applicant will lease the movable equipment that is located at Guthrie Same Day Surgery Center, Inc. (GSDS), 31 Arnot Road, Horseheads, NY (Chemung County), which will be the location of the new extension clinic for CH, under the terms of the agreements summarized below:

<i>Lessor:</i>	Guthrie Same Day Surgery Center, Inc.
<i>Lessee:</i>	Corning Hospital
<i>Term:</i>	59 months commencing on January 1, 2013
<i>Rental:</i>	\$24,671.42 per month (\$296,057.04 per year)

Operating Budget

The applicant has submitted an operating budget for the first and third years of operation, which is summarized below:

	<u>Years One and Three</u>
Revenue	
Medicare	\$1,450,074
Medicare Managed Care	143,009
Medicaid Managed Care	197,957
Private	7,297
Commercial	1,651,902

Commercial Managed Care	1,380,743
All Other	37,918
Total Revenue	<u>\$4,868,900</u>
Expense	
Operating	\$2,042,337
Capital	426,638
Total Expense	<u>\$2,468,975</u>
Net Income	<u>\$2,399,925</u>
Visits	3,407
Cost per Visit	\$724.68

Utilization by payor source is anticipated as follows:

	<u>Years One and Three</u>
Medicare	34.58%
Medicare Managed Care	4.23%
Medicaid Managed Care	7.72%
Private	.18%
Commercial	28.79%
Commercial Managed Care	23.04%
All Other	1.46%

Expense assumptions are based upon current historical free-standing ambulatory surgery center operating costs, updated to reflect hospital based outpatient surgical operations and utilization; and are further based on the population currently being served by the current free standing ambulatory surgery center, with no material changes resulting from the proposed extension clinic model.

#### Capability and Feasibility

There is no issue of capability for this project, as there is no purchase price between related parties.

The applicant projects a need for approximately \$411,496 for working capital, an amount that appears reasonable. The working capital will be provided through accumulated funds of the facility.

The issue of feasibility is centered on the applicant's ability to offset ongoing expense with revenue. The submitted budget indicates a net income of \$2,399,925 in years 1 and 3. Revenues are based on hospital based reimbursement methodology for governmental payers and existing Corning Hospital third party contracts. The budget appears reasonable.

Presented as BFA Attachment A, is a financial summary of Corning Hospital and affiliate during the period 2008 - 2011. As shown, the facility incurred an average net income of \$10,667,185 during 2008 through 2011. The facility also achieved an average positive working capital and net asset position for the period 2008 – 2011.

Presented as BFA Attachment B, is an internal financial summary of Corning Hospital and Affiliate during the period January 1, 2012 - May 31, 2012. As shown, the facility incurred a net income of \$6,483,000 during the period shown. The facility also achieved a negative working capital position of \$472,000 and a positive net asset position of \$84,425,000 during the period shown.

Presented as BFA Attachment C, is a financial summary of Guthrie Same Day Surgery Center, Inc. during the period 2008 - 2011. As shown, the facility incurred an average net loss of \$173,922 during 2008 through 2011. The facility also achieved an average negative working capital position and an average negative net asset position during the period shown. GSDS has historically operated at a loss and has been supported by its parent Guthrie Healthcare system, whose financial statements are shown as BFA Attachment E.

The applicant indicates that the reasons for the losses incurred by GSDS are due to an inefficient clinical and economic model that the center follows. This will be rectified with the new extension clinic due to the integration of the surgical capacity at GSDS with that of the proposed new Corning Hospital, and because of a higher rate of pay for cases performed at the extension clinic from both Medicare and certain commercial payors.

Medicaid will not incur higher expenditures, since there are no projected Medicaid fee-for-services cases, as all will be managed care. Also, there will be better economies of scale, because the two sites will share equipment, supplies and inventory. Presented as BFA Attachment D, is an internal financial summary of Guthrie Same Day Surgery Center, Inc. during the period January 1, 2012-May 31, 2012. As shown, the facility incurred an average net income of \$228,000 during the period shown. The facility also achieved a negative working capital position and a negative net asset position during the period shown. The facility is now winding down operations at the site, in order to transfer control of the site to the new Corning Hospital Surgery Center.

Presented as BFA Attachment E, is the consolidated financial statements for Guthrie Healthcare System for the years 2009 - 2012. As shown, GHS incurred an average net income of 56,368,495 during the period shown. The facility also achieved both average positive working capital and net asset positions for the period shown.

Based on the preceding, subject to the noted contingencies, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

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

## Attachments

BFA Attachment A	Certified financial statement 2008 - 2011 Corning Hospital and affiliate
BFA Attachment B	Interim Financial Statement Corning Hospital and affiliate for period January 1, 2012 - May 31, 2012
BFA Attachment C	Certified Financial Statement 2008 - 2011 Guthrie Same Day Surgery Center, Inc.
BFA Attachment D	Interim Financial Statement Guthrie Same Day Surgery Center, Inc. for period January 1, 2012 - May 31, 2012
BFA Attachment E	Consolidated financial statements for Guthrie Healthcare System for the year 2009 - 2012





# Public Health and Health Planning Council

## Project # 121466-C Long Island State Veterans Home

**County:** Suffolk (Stony Brook)  
**Purpose:** Construction

**Program:** Residential Health Care Facility  
**Submitted:** June 27, 2012

### Executive Summary

#### Description

Long Island State Veterans Home (LISVH) is a 350-bed residential health care facility (RHCF), located on the campus of Stony Brook University on Long Island. The facility provides around-the-clock nursing and subacute care to veterans of the United States armed forces, as well as a 40-slot adult day health care program (ADHCP). The facility is operated by the Health Sciences Center of Stony Brook University.

The facility requests approval to perform renovations to the nursing facility, as well as expansion of the program areas for the nursing facility and their ADHCP. The project includes an addition to the existing structure in order to expand the skilled therapy area, expand and relocate the medical suite, and provide for additional training, conference rooms, and family meeting rooms.

The addition will be configured at project initiation to serve as a 30-bed nursing home unit, which will be utilized during the renovations to the nursing home units. This will allow the project to proceed in a timelier manner and avoid the disruption and safety challenges of renovation with the occupied resident area. Once the renovations to the nursing home have been completed, the building addition will then be converted per the final program plan to house the relocation and expansion of the programs and services noted. This project will be comprised of 4 sub projects:

**Sub-project 1:** Construct a building addition consisting of 16,000 sq. ft., to initially be configured as a 30-bed nursing unit, thereby creating a temporary swing space as the individual nursing care units are renovated.

**Sub-project 2:** Renovate twelve nursing care units.

**Sub-project 3:** At the conclusion of unit renovations, the building addition will be reconfigured into the 5,500 sq. ft.

ADHCP. Upon completion, the existing ADHCP will relocate to the newly renovated space.

**Sub-project 4:** Renovate space previously occupied by the ADHCP, to include OT/PT expansion, short-term rehabilitation expansion, medical suite relocation and expansion, and conference and family meeting rooms.

Total project costs are estimated at \$22,424,721.

DOH Recommendation  
Contingent approval.

#### Need Summary

As this project is for Construction only, with no change in beds or program, no Need recommendation is required.

#### Program Summary

Long Island State Veterans Home is in current compliance with all codes, rules and regulations. The residential areas of the 21-year old facility are in need of renovation and refurbishment. The construction of additional space allows the renovation project to proceed with a moderated impact on the residents, and the eventual expansion and updating of program space.

#### Financial Summary

Project costs of \$22,424,721 will be met with \$9,854,923 in accumulated funds, \$8,170,368.70 from the Department of Veterans Affairs Grant, and a matching grant from New York State for \$4,399,429.30.

Budget:	<i>Revenues:</i>	\$ 52,621,000
	<i>Expenses:</i>	50,128,000
	<i>Gain/(Loss):</i>	\$ 2,493,000

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 fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a final Grant approval letter to be used as a source of financing that is acceptable to the Department of Health. [BFA]
3. The submission and approval of a waiver to 10 NYCRR 713-4.4(c) permitting the operation of less than 10% single bedrooms for the periods of temporary occupancy. [LTC]
4. Submission of a decanting plan for each nursing unit including the dementia and respiratory care specialty units. [LTC]
5. Submission of and programmatic review and approval of the final floor plans, which incorporate the conditions noted below. [LTC]
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. Submission and approval of the patient safety plan by the area office prior to the commencement of renovation to the nursing units and accompanying relocation of residents into the temporary nursing unit.
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]
3. The applicant shall complete construction by February 20, 2019 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**

## Programmatic Analysis

### Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Long Island State Veterans Home	Same
<i>Address</i>	SUNY at Stonybrook 100 Patriots Road Stonybrook, NY 11790	Same
<i>RHCF Capacity</i>	350	Same
<i>ADHC Program Capacity</i>	40	Same
<i>Type Of Operator</i>	Public	Same
<i>Class Of Operator</i>	State	Same
<i>Operator</i>	NYS Dept. of Health d/b/a Health Sciences Center	Same

### Program Review

Long Island State Veterans Home (LI Veterans) is a 350-bed nursing home with a 40-registrant adult day health care program operated by Stony Brook University, serving the veterans of the armed forces of the United States. Since opening in 1991 the skilled nursing facility has undergone only limited maintenance work, with the nursing units in general need of updating and refurbishment. In order to proceed with the facility wide renovation program, the operator has elected to construct an addition to the nursing home to serve as decanting space. The new addition will be able to accommodate a fully functioning, code compliant 26 bed nursing unit. The applicant will also convert a lounge on the first floor into double bedrooms, allowing LI Veterans to undertake the renovation of each nursing unit without impinging on the safety of the residents.

Once the refurbishment of the residential space is completed, the addition will be renovated to function as the new location for the adult day health care program. The relocation of the ADHCP will in turn free up space in the existing nursing home building to enable the expansion of the rehabilitation area and medical suite, and add family meeting and conference room space.

There will be no changes to the bed complement or program capacity of the adult day health care program because of this project.

### Physical Environment

The construction project will involve four phases. Initially LI Veterans will construct a 16,000 square foot addition (including basement). The addition will be constructed as a "U" shaped nursing unit containing 13 double bedrooms each with handicapped accessible toilet room. The temporary unit will also include a dining area and central bathing area with stretcher shower. In addition a lounge area on the first floor will be divided to form two handicapped accessible double bedrooms with bathrooms, providing for a total of 30 beds. The temporary relocation of residents from an entire nursing unit shortens the renovation time for the project, currently estimated as 50 months. The facility will then be able to complete the refurbishment of a nursing unit in less than three months, without degrading the residential environment. Due to the use of the 15 temporary double bedrooms, at times the nursing home will not comply with 10 NYCRR 713-4.4(c); the facility will be required to submit a waiver to permit the periodic operation of fewer than 10% single bedrooms.

LI Veterans bed complement also includes a 55 bed dementia unit and a 55 bed respiratory unit (two subunits of 25 and 30 beds each.) The new temporary nursing unit will include in-wall suction to enable the respiratory residents to be relocated into the new unit, however the unit will not contain all the features of the existing dementia unit. LI Veterans is currently studying how the two specialty units will be relocated during the construction phase, requiring the insertion of a contingency for the submission of a decanting plan for all the nursing units including the specialty units.

The second phase of the project will then proceed, involving the refurbishment of all twelve nursing units. Work will include new wall and ceiling surfaces, and lighting in the resident rooms, new sinks, toilets and tile in the bathrooms, new floor tile, the replacement of all nursing stations and new furnishings in the lounges.

The third and fourth phases will commence immediately upon the completion of the nursing unit refurbishment project, with the new addition undergoing limited renovation to transform the unit into the new home for the new adult day health care program. The relocated ADHCP will comply with 10 NYCRR 714.4, and enable the expansion of the undersized rehabilitation services area, and the construction of additional medical exam and conference rooms in the vacated space.

Conclusion

The residential areas of the 21 year old Long Island Veterans Home are in need of renovation and refurbishment. The construction of additional space allows the renovation project to proceed with a moderated impact on the residents, and the eventual expansion and updating of program space.

Recommendation

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

## Financial Analysis

Total Project Cost and Financing

Total project cost for New Construction and renovations is estimated at \$22,424,721, itemized as follows:

New Construction	\$4,922,030
Renovation and Demolition	12,111,588
Site Development	355,198
Design Contingency	1,738,881
Construction Contingency	1,462,334
Planning Consultant Fees	32,125
Architect/Engineering Fees	1,647,202
Other Fees	30,713
CON Application Fee	2,000
CON Processing Fee	<u>122,650</u>
Total Project Cost	<u>\$22,424,721</u>

Project cost is based on a January, 03, 2013 construction start date and a 74 month construction period. The applicant's financing plan is as follow:

Accumulated Funds	\$ 9,854,923.00
Department of Veteran Affairs Grant	8,170,368.70
New York State Grant	<u>4,399,429.30</u>
Total	\$22,424,721.00

Operating Budget

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

RHCF

	<u>Years One and Three</u>
Revenues:	\$50,660,000
Expenses:	
Operating	44,558,000
Depreciation and Rent	<u>3,198,000</u>
Total Expenses	\$47,756,000

Net Revenue:	<u>\$2,904,000</u>
Utilization: Patient Days	126,707

ADHCP

	<u>Years One and Three</u>
Revenues:	\$1,961,000
Expenses:	
Operating	2,234,000
Depreciation and Rent	<u>138,000</u>
Total Expenses	\$2,372,000
Net Revenue/(Loss):	<u>(\$411,000)</u>
Utilization: Visits	10,624

Utilization by payor source, is based on historical experience, and is anticipated as follows for years one and three:

RHCF

Medicaid Fee-for-Service	67.30%
Medicare Fee-for-Service	6.25%
Private Pay/Other	26.45%

ADHCP

Medicaid Fee-for-Service	80.13%
Private Pay/Other	19.87%

Expense and utilization assumptions are based on the historical experience of the applicant, adjusted for the additional depreciation costs associated with the project.

Capability and Feasibility

The issue of capability centers on the applicant's ability to satisfy project cost. Review of BFA Attachment A, financial summary of Long Island State Veterans Home, indicates sufficient resources for the equity contribution of \$9,854,923.

The remaining \$12,569,798 will be satisfied from a Department of Veterans Affairs grant in the amount of \$8,170,368.70, and a New York State matching grant in the amount of \$4,399,429.30.

The issue of feasibility centers on the applicant's ability to meet expenses with revenues and maintain a viable ongoing entity. The submitted budget indicates that Long Island State Veterans Home will generate a net income of approximately \$2,493,000 in both years 1 and 3.

As shown on BFA Attachment A, Long Island State Veterans Home maintained a positive average working capital position, an average positive net asset position, and had an average net income of \$3,006,802 during the period 2009-2011.

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

Recommendation

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

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## Attachments

BFA Attachment A      Financial Summary, Long Island State Veterans Home 2009-2011



# Public Health and Health Planning Council

## Project # 122050-C Lutheran Augustana Center for Extended Care & Rehabilitation, Inc.

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

**Program:** Residential Health Care Facility  
**Submitted:** August 1, 2012

### Executive Summary

#### Description

Lutheran Augustana Center for Extended Care and Rehabilitation, Inc., a 240-bed not-for-profit residential health care facility (RHCF) located at 5434 Second Avenue, Brooklyn, requests approval to certify a 12-bed ventilator-dependent service. The proposed ventilator-dependent service will be developed through the conversion of 12 existing RHCF beds to 12 ventilator-dependent beds within a 40-bed residential care unit, located on the third floor of the facility. Therefore, there will be no net increase or decrease in the facility's certified capacity as a result of this project. The remaining 28 beds on the unit include respiratory step down beds, as well as beds for tracheotomy and other respiratory patients.

Total project costs are estimated at \$1,417,679.

DOH Recommendation  
Contingent approval.

#### Need Summary

Although the number of ventilator-dependent beds approved for the New York City Region totals the number prescribed by the need methodology set forth in 10 NYCRR Section 709.17, more than 100 of these beds have yet to become operational, leaving an actual bed need in the region. This warrants consideration of Lutheran Augustana Center's proposal for a modest 12 beds, which could likely be brought into service expeditiously because of the distinctive features of the nursing home's proposed ventilator program.

#### Program Summary

In light of the ongoing renovations required for the ventilator unit, the addition of medical gases in the dining room is warranted, and can likely be added with little additional cost. Revisions to the design of the unit will be reviewed concurrently with the submission of final working drawings.

#### Financial Summary

Total project costs will be met via equity of \$817,679 and a bank loan of \$600,000 (5 yrs. @ 4.25%).

Budget:	<i>Revenues:</i>	\$ 2,771,879
	<i>Expenses:</i>	<u>2,169,938</u>
	<i>Gain/(Loss):</i>	\$ 601,941

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 fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation addressing the outstanding programmatic issues, including the location of the weaning room and the inclusion of piped-in oxygen in the dining room. [LTC]
3. Submission of and programmatic review and approval of the final floor plans, which adequately address the issues noted above. [LTC]
4. Submission of a loan commitment 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 June 30, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**



## Need Analysis

### Background

Lutheran Augustana Center is an existing 240 bed residential health care facility located at 5434 Second Ave, Brooklyn, 11220, in Kings County. Lutheran Augustana seeks to certify 12 ventilator dependent beds through the conversion of 12 RHCF beds.

### Analysis

In October, 2011, seven nursing homes received approval to operate a total of 109 ventilator beds in the New York City planning region, fulfilling the need for ventilator beds in the five boroughs. However, none of these 109 "pipeline" beds, 67 of which are to be operated by five nursing homes that have yet to satisfy their project contingencies, are accessible to ventilator patients within the region. Therefore, a *de facto* need for ventilator beds still exists in the New York City planning area. In addition:

- There are no RHCF ventilator beds in service or contingently approved in western Kings County, where Lutheran Augustana Center is located. This area includes five hospitals with a total of 2,647 beds.
- Hospital ventilator inpatients account for 5,040 excess patient days in acute care settings in Kings County, which is the equivalent of 13.8 ventilator-dependent beds operating at full capacity.

Approval of the proposed 12 beds would help meet an unmet need in the New York City region, including in the western part of Brooklyn served by Lutheran Augustana Center. The Lutheran Augustana Center project also has features which suggest that the proposed beds could be brought into service promptly, without the delays that have characterized the seven ventilator bed projects approved in 2011. Specifically:

- The affiliation and physical connection between Lutheran Augustana Center and Lutheran Medical Center. These are key to a distinctive feature of the project, which is the seamless transfer of acute care patients from the hospital to the nursing home ventilator unit. But they will also reduce the time needed for the establishment of transfer and admission protocols and program coordination that will be needed to make ventilator services operational, particularly since the ICU staff at Lutheran Medical Center already has considerable experience and expertise in weaning patients off ventilator care. In addition, the applicant's collaboration with the recently approved Lutheran CHHA program will facilitate the development of necessary treatment protocols and discharge practices for ventilator patients who can be discharged to home care.
- Lutheran Augustana Center's proposed conversion of 12 RHCF beds and existing space to ventilator use, rather than an addition to bed capacity and completion of major renovations, will prevent undue delays in project implementation and permit expeditious commencement of ventilator bed service.

### Conclusion

The persistence of need for ventilator beds in the planning region, especially in the western part of Brooklyn served by the applicant, and the capacity of the applicant to bring the proposed beds into service expeditiously warrant approval of this application.

### Recommendation

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

## Programmatic Analysis

### Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Lutheran Augustana Center for Extended Care and Rehabilitation, Inc.	Same
<i>Address</i>	5434 Second Avenue Brooklyn, NY 11220	Same
<i>RHCF Capacity</i>	240 RHCF	228 RHCF 12 Ventilator Dependent
<i>ADHC Program Capacity</i>		
<i>Type Of Operator</i>	Proprietary	Same
<i>Class Of Operator</i>	Non-For-Profit	Same
<i>Operator</i>	Lutheran Augustana Center for Extended Care and Rehabilitation, Inc.	Same

### Program Review

Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (Lutheran Augustana) is an existing not-for-profit 240 bed residential health care facility located at 5434 Second Avenue in Brooklyn. Lutheran Augustana had submitted a previous application (082176) to certify a 12 bed ventilator dependent unit which had received a disapproval recommendation on the basis of competitive need. The earlier application had justified need significantly on an ability to provide ventilator dialysis care, with Lutheran Augustana submitting a separate application to certify a 5 station dialysis unit. The dialysis unit however never came to fruition, as Lutheran Augustana was unable to identify a suitable location for the dialysis unit.

In the summer of this year Lutheran Augustana approached the Department to discuss the possibility of submitting an updated application for consideration to be based on new factors which were affecting the demand for ventilator dependent beds in Brooklyn. In August Lutheran Augustana submitted a revised request for a 12 bed ventilator unit to address access issues in the area immediately surrounding the nursing home.

The subject application utilizes many of the same materials developed for the earlier proposal. Lutheran Augustana will initiate a ventilator dependent service through the conversion of 12 existing SNF beds located on the third floor of the facility. The remaining 28 beds on the nursing unit will function primarily as a ventilator step down and general respiratory unit, including tracheotomy residents. There will be no net increase or decrease in the facility's certified capacity as a result of this project.

Augustana Lutheran will rely on Lutheran Medical Center for the clinical management of many of the ventilator residents. In addition Dr. Marc Bowen, the Medical Director for the Lutheran surgical ICU, will serve as Medical Director for the ventilator dependent program. Lutheran Medical Center is located across the street from the hospital and physically connected by a bridge. The connection will facilitate the quick transfer of ventilator residents to the hospital in the event of an emergency. Lutheran Augustana will utilize an interdisciplinary team with a primary care physician, pulmonologist, registered nurse, respiratory therapist, speech pathologist and rehabilitation and social work personnel to develop the care plan for each resident. Programmatic materials submitted in the earlier application demonstrate an understanding of the needs of ventilator dependent residents. The applicant has also submitted an acceptable program for weaning residents from mechanical ventilation, guided by the operating philosophy of achieving independence for as many residents as possible.

Several program issues will require additional dialogue. The applicant does not identify a specific room in the ventilator unit where weaning will take place, indicating the four step-down beds will be utilized for weaning. This is not entirely consistent with the submitted weaning program. Also, the applicant states that dining will take place in resident rooms. This is inconsistent with the program goals to allow maximum freedom of movement and a more

homelike setting in the ventilator unit. Strong consideration should be given to adding of piped-in oxygen and suction to the dining room to permit socialization with the other residents of the floor, who may also need the additional support from time to time.

Physical Environment

Lutheran Augustana will renovate two (2) single bedrooms and five (5) double bedrooms to comprise a ventilator unit on the third floor of the nursing home. Piped-in oxygen and suction will be installed in all rooms in the unit, and a Type 1 electrical system will ensure the continued operation of the unit in the event of an electrical disruption. The unit includes adequate equipment storage, and the shower will be sized accordingly to accommodate residents using multiple equipment, including ventilators and infusion pumps.

In light of the ongoing renovations required for the ventilator unit, the addition of medical gases in the dining room is warranted, and can likely be added with little additional cost. Revisions to the design of the unit will be reviewed concurrently with the submission of final working drawings.

Conclusion

Lutheran Augustana has established the need for an additional ventilator dependent program in Brooklyn, particularly in the wake of Hurricane Sandy. Further refinement of the program is required to address the outstanding issues previously noted.

Recommendation

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

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,417,679, itemized as follows:

Renovation and Demolition	\$675,855
Design Contingency	67,586
Construction Contingency	67,586
Architect/Engineering Fees	67,500
Other Fees (Consultant)	46,575
Moveable Equipment	454,598
Telecommunications	16,922
Financing Costs	6,000
Interim Interest Expense	5,313
CON Fee	2,000
Additional Processing Fee	7,744
Total Project Cost	\$1,417,679

Project costs are based on a January 1, 2013 construction start date and a four month construction period.

The applicant's financing plan appears as follows:

Equity	\$817,679
Bank Loan (4.25% interest rate for five years)	600,000

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,642,389	\$2,771,879
Expenses:		
Operating	\$2,041,149	2,055,107
Capital	<u>124,399</u>	<u>114,831</u>
Total Expenses	\$2,165,548	\$2,169,938
Excess of Revenues over Expenses	\$476,841	\$601,941
Utilization: (patient days)	3,942	4,161

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	68.01%	67.98%
Medicare Fee-for-Service	26.99%	26.98%
Private Pay	5.00%	5.04%

Expense and utilization assumptions are based on the current experience of Lutheran Augustana and knowledge of other ventilator dependent units.

#### Capability and Feasibility

Project costs of \$1,417,679 will be met as follows: Equity of \$817,679 and a bank loan of \$600,000 at an interest rate of 4.25% for a five year term.

The applicant provided a bank letter of interest in regard to the financing.

Presented as BFA Attachment A is the financial summary of Lutheran Augustana Center for Extended Care and Rehabilitation, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$476,841 and \$601,941 during the first and third years, respectively. Revenues assume current reimbursement methodologies for ventilator dependent services. The submitted budget appears reasonable.

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 incurred an average excess of expenses over revenues of \$656,802 from 2009 through 2011. The applicant has indicated that the reasons for the losses were the following: annual reductions to Medicaid reimbursement and a decline in occupancy. The applicant has indicated that they implemented the following steps to improve operations: reductions in force in all areas other than direct patient care, i.e., management, clerical, etc.; currently seeking proposals for a building management system to improve energy efficiency and equipment utilization for the heating and air conditioning equipment, as well as reviewing proposals for replacement of the air conditioning units with energy efficiency models; refinanced its existing DASNY mortgage in order to achieve savings; renegotiated managed care contracts; cost containment/reduction through competitive bidding of consumable materials and supplies and items and has significantly improved its average occupancy from 90% in 2011 to 95% in 2012, of which there continues to be a focus on increased volume of new admissions and community discharges as the RHCF has transitioned into a primarily short stay facility.

Presented as BFA Attachment B are the July 31, 2012 internal financial statements of Lutheran Augustana Center for Extended Care & Rehabilitation. As shown, the facility had positive working capital and positive net assets through July 31, 2012. Also, the facility achieved an excess of revenues over expenses of \$164,744 through July 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.**

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## Attachments

BFA Attachment A	Financial Summary- Lutheran Augustana Center for Extended Care & Rehabilitation
BFA Attachment B	July 31, 2012 internal financial statements of Lutheran Augustana Center for Extended Care & Rehabilitation



# Public Health and Health Planning Council

Project # 121230-C  
**New York Dialysis Services, Inc.**  
**d/b/a FMS - Southern Manhattan Dialysis Center**

**County: Wayne (Newark)**  
**Purpose: Construction**

**Program: Dialysis Services**  
**Submitted: April 17, 2012**

## Executive Summary

### Description

FMS-Southern Manhattan Dialysis Center, an existing proprietary business corporation located at 510-526 Avenues of the Americas, Manhattan, requests approval to certify a 17-station chronic renal dialysis extension clinic to be located at Newark Industrial Park Lot #8, Newark (Wayne County). FMS-Southern Manhattan Dialysis Center is operated by New York Dialysis Services, Inc., a New York Corporation authorized by the Public Health Council to operate 30 freestanding diagnostic and treatment centers for dialysis services. New York Dialysis Services, Inc.'s sole member and owner is Fresenius Medical Holdings, Inc.

Total project costs are estimated at \$1,577,922.

### DOH Recommendation

Disapproval as proposed. Contingent approval as amended by the Department, for 14 freestanding dialysis stations.

### Need Summary

There are no dialysis facilities in Wayne County. The Department's Need methodology for dialysis services, as set forth in Title 10 NYCRR Part 709.4, indicates a need for 28 stations. This need will be met with the approval of this application and CON #121106-B (Newark Wayne Dialysis Center), also to be located in Newark.

Contingent approval for 14 freestanding dialysis stations is recommended.

### Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to Section 2802-(3)(e) of the New York State Public Health Law.

### Financial Summary

The project costs are \$1,577,922 which will be paid through equity.

Budget:	<i>Revenues:</i>	\$ 3,466,799
	<i>Expenses:</i>	<u>2,972,329</u>
	<i>Gain/(Loss):</i>	\$ 494,471

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

## Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval for this application, as amended by the Department.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR]
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 building lease that is acceptable to the Department. [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 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 April 30, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**

# Need Analysis

## Background

FMS Southern Manhattan Dialysis seeks to establish a 17-station chronic renal dialysis facility to be located at Newark Industrial Park Lot 8, Newark, 14613, in Wayne County.

## Analysis

Wayne County, which had a population of 93,436 in 2011, is the service area for the proposed facility. There are no dialysis facilities or stations in Wayne County.

The Department tracks statistics on populations with a higher probability of contracting End Stage Renal Disease (ESRD), which requires dialysis. Wayne County's average elderly population is higher than the overall state average but the minority population is lower than the proportion for the state as a whole.

<u>Ages 65 and Over 2011:</u>	14.80%	<u>State Average:</u>	13.7%
<u>Nonwhite 2011:</u>	9.04%	<u>State Average:</u>	42.0%

Those over the age of 65 are the largest users of dialysis services. In Wayne County, the 65+ age group represents 14.8% of the population, slightly above the statewide average of 13.7 percent. Type II diabetes is the leading cause of ESRD, and minority groups are at a greater risk of developing the disease. However, the non-white population of Wayne County is 9.04 percent, which is considerably lower than the statewide average of 42.0 percent.

The Department's methodology to estimate capacity for chronic dialysis stations is set forth in Section 709.4 of Title 10 and is as follows:

One freestanding station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which can accommodate 15 patients per week. This is a potential  $780 \times 52 \text{ weeks} \times 90\% = 702$ .

One hospital based station is calculated at 499 treatments per year per station. This is the result of  $2.0 \text{ shifts/day} \times 6 \text{ days/week} \times 52 \text{ weeks} \times 80\%$ . One hospital based station can treat 3 patients per year.

Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are freestanding, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on the establishment of additional freestanding stations.

The projected need for 2017 is 28 stations, as detailed in the table below.

	2012		2017	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated	Projected Residents Treated
	0	116	0	125
Free Standing Stations Needed	0	26	0	**28
Existing Stations	0	0	0	0
Existing Stations w/Approval of CON	***28	***28	28	***28
Unmet Need Without Approval	0	26	0	***28
Unmet Need With Approval	0	***-2	0	***0

\*\* Projected Need: Based upon a conservative estimate of a one percent annual increase in residents treated

\*\*\* The station numbers are inclusive of stations contained in another review being submitted concurrently

A 1.5% growth rate was used to account for a projected population decrease from 2010 to 2015 of 0.5%. This growth rate takes the projected increase in the elderly population of 13.2% into account (Source: Cornell University <http://pad.human.cornell.edu/counties/projections.cfm>).



Conclusion

There are currently no dialysis stations in Wayne County. Although the county’s minority population is relatively low, its population of persons 65 and older, white and non-white, is of a size sufficient to warrant the approval of 28 stations, as shown by application of the section 709.4 need methodology to the jurisdiction. This need would be met with the approval of this application and CON #121106-B, Newark Wayne Dialysis, for 14 stations each.

Recommendation

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

**Programmatic Analysis**

Background

New York Dialysis Services, Inc. d/b/a FMS-Southern Manhattan Dialysis Center requests approval to construct a 17-station dialysis extension clinic at West Shore Boulevard, Newark. The extension clinic will be called FMS-Northern Finger Lakes Dialysis Center.

Staffing is expected to consist of 11.1 FTEs, increasing to 17.8 FTEs by the third year of operation. It is anticipated the Center will operate 2.5 shifts six days per week in year 1, increasing to 3.0 shifts per day by year 3. Clifton Springs Hospital & Clinic, 8.7 miles and 16 minutes travel time, has signed a letter of intent to be the back-up facility.

Current Compliance with Applicable Codes, Rules and Regulations

New York Dialysis Services, Inc. operates 25 dialysis centers in New York State. This applicant 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, contingent approval is recommended.**

**Financial Analysis**

Lease Agreement

The applicant has submitted a draft lease rental agreement for the site to be occupied, the terms of which are summarized below:

- Premises:* 8,000 square feet located at Newark Industrial Park, West Shore Blvd., Lot 8, Newark, New York
- Landlord:* Wayne County Dialysis Properties, LLC
- Tenant:* FMS-Northern Great Lakes Dialysis Center, LLC
- Term:* 10 Years with option to renewal with three 5 year periods.
- Rental:* Year 1-5, (\$15.50 per sq. ft.) or \$10,333.33 per month; Year 6-10, (\$17.05 per sq. ft.) or \$11,366.67 per month.
- Provisions:* The lessee shall be responsible for taxes, maintenance and utilities.

The proposed lease agreement is an arm’s length transaction, since neither party is related. Letters of opinion from license, commercial real estate brokers have been submitted indicating rent reasonableness.

Total Project Cost and Financing

Total project cost for new construction and the acquisition of movable equipment is estimated at \$1,577,922, broken down as follows:

New Construction	\$998,696
Temporary Utilities	25,000
Design Contingency	6,600
Construction Contingency	120,000
Fixed Equipment	85,000
Architect/Engineering Fees	89,884
Movable Equipment	227,122
Planning Consultant Fees	15,000
CON Application Fee	2,000
CON Processing Fee	<u>8,620</u>
Total Project Cost	<u>\$1,577,922</u>

The applicant will finance the total project through equity from Fresenius Medical Holdings Inc.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$1,827,338	\$3,466,799
Expenses:		
Operating	1,585,621	2,645,385
Capital	<u>318,511</u>	<u>326,943</u>
Total Expenses	\$1,904,132	\$2,972,328
Net Income(Loss)	<u>\$(76,794)</u>	<u>\$494,471</u>
Utilization: (treatments)		
Total Hemodialysis	5,976	10,872
Cost Per Treatment	\$318.62	\$273.39

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

Medicare Fee-for-Service	64.2%
Medicaid Fee-for-Service	3.5%
Commercial Fee-for-Service	7.9%
Other*	24.4%

*\* Other represents Private Pay, Advantage/Risk Plan and Veterans Administration patients.*

Expense and utilization assumptions are based on historical data from the geographic areas that FMS-Southern Manhattan Dialysis Center services in New York County.

Capability and Feasibility

The project costs will be financed through equity of Fresenius Medical Holdings Inc. Presented as BFA Attachment E is the financial summary of Fresenius Medical Holdings Inc. which shows sufficient equity.

Working capital requirements, estimated at \$495,388, appear reasonable based on two months of third year expenses and will be provided through Fresenius Medical Holdings, Inc. Presented as BFA Attachment E is the financial statement of Fresenius Medical Holdings, Inc. showing sufficient equity. Presented as BFA Attachment C, is the pro-

forma balance sheet of FMS-Southern Manhattan Dialysis Center-Newark as of the first day of operation, which indicates negative equity of \$180,054. Fresenius Medical Holdings, Inc. has stated that they will cover the required working capital and project costs.

Presented as BFA Attachment F, is the break-even analysis for FMS Southern Manhattan Dialysis Center- Newark. The analysis provides the following information based on need methodology, cost and volume:

- The Dialysis center will achieve an approximate break-even cost per treatment by the seventeenth month of operation at 9,486 visits.
- The seventeenth month break-even point is based on the utilization of approximately 13 stations.
- At the end of the third budget year, the Dialysis center is projecting a volume of 10,872 treatments, resulting in the approximate need for 16 stations.

Fresenius Medical Holdings, Inc. has also stated that any potential losses prior to achieving break-even would be subsidized by Fresenius Medical Care of North America, the facility's operator's parent company.

Presented as BFA Attachment D is a 2011 unaudited consolidated financial summary for New York Dialysis Services, Inc. which has experienced negative working capital, negative stockholder's deficit and a net loss from operations of \$4,061,094 in 2011 and is currently taking corrective actions to decrease the consolidated losses as follows:

- Enhancement of labor union/management relations
- Identification of centers for acquisition by NYDS ( which will leverage fixed costs)
- Improved day-to-day management of staff/patient schedules and equipment and supply stop-loss
- Increased number of patients with commercial insurance carriers (which pay a higher reimbursement rate)

The submitted incremental budget projects a net loss of \$76,794 and net income of \$494,471 during the first and third years, respectively. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The budget appears reasonable.

DOH staff notes that with the applicant's submitted budget and BFA Attachment F, Break-Even analysis, feasibility will be achieved at 13.5 stations in the seventeenth month of service with 9,486 treatments.

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

Recommendation

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

## Attachments

BFA Attachment A	Listing of New York Dialysis Treatment Centers FMS-Southern Manhattan Dialysis Center
BFA Attachment B	Organizational Chart for Fresenius Medical Holdings, Inc.
BFA Attachment C	Pro-forma Balance Sheet FMS-Southern Manhattan Dialysis Center-Newark
BFA Attachment D	Financial Summary-New York Dialysis Services, Inc.
BFA Attachment E	Financial Summary-Fresenius Medical Holdings, Inc.
BFA Attachment F	Break-even Analysis



# Public Health and Health Planning Council

## Project # 121248-C Elderserve Long Term Health Care

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

**Program:** Certified Home Health Agency  
**Submitted:** April 18, 2012

### Executive Summary

#### Description

The Hebrew Home for the Aged at Riverdale, Inc., a not-for-profit corporation, requests approval to convert its long-term home health care program (LTHHCP), ElderServe Long Term Home Health Care, to a certified home health agency (CHHA). The CHHA would serve a more extensive geographical area, which would operate in all five boroughs of New York City as well as Nassau, Suffolk, and Westchester Counties. The CHHA will provide the following services: Nursing, physical therapy, speech pathology, occupational therapy, medical social services, nutrition and home health aides.

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. Hebrew Home for the Aged at Riverdale 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 to a broad effort to promote the development of care management arrangements for Medicaid recipients.

DOH Recommendation  
Approval.

#### Need Summary

The applicant identified neighborhoods that are medically underserved and lack adequate access to home and community-based services or which have high numbers of uninsured and inadequate access to primary care. There are also high rates of asthma, obesity, diabetes, tobacco and alcohol use and hypertension in these neighborhoods. The applicant elaborated on diseases that are most prevalent in the Medicare and dual-eligible populations and described quality of health indicators which demonstrate a high proportion of at risk populations.

#### Program Summary

The Hebrew Home for the Aged at Riverdale is currently in compliance with all applicable codes, rules and regulations.

#### Financial Summary

There are no project costs associated with this application.

Budget:	<i>Revenues:</i>	\$ 22,101,803
	<i>Expenses:</i>	<u>21,775,842</u>
	<i>Gain/(Loss):</i>	\$ 325,961

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval 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

**December 6, 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 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.

Applicants that were not presented to the Public Health and Health Planning Council with a recommendation for approval at either the August 2012 or October 2012 meetings were considered deferred. The department notified RFA applicants that we are exercising our authority under the RFA Section VII.D.5 to seek clarifications and revisions of applications from those applicants whose applications have been deferred. Letters dated September 17<sup>th</sup> and 27<sup>th</sup> were sent to these applicants through NYSECON and included information related to the review and evaluation criteria and characteristics of approved applicants.

Additionally, the opportunity to arrange a meeting or phone conference with the Division of Home and Community Based Services to discuss the RFA criteria that was used to evaluate each application was made available to each applicant

### Competitive Review

The applications, including any additional information submitted, are being reviewed by the Department and recommendations are being presented to the Public Health and Health Planning Council.

The CON determination of need was based on the applicant's response to the RFA which includes any additional information submitted by the applicant in response to the aforementioned September 17<sup>th</sup> and 27<sup>th</sup> letters. The applications were reviewed 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;
- Description of a 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 Hebrew Home for the Aged at Riverdale is part of a long term health care system which includes nursing homes, a Long Term Home Health Care Program, social adult day care, senior housing, a LHCSA and a managed long term care plan (MLTCP)

The applicant showed that they have the ability to facilitate the mandatory enrollment in MLTCPs. If approved, the service area of their CHHA will be the same as the service area of their approved MLTCP, ElderServe Health, Inc.

Their emphasis will be to avoid over utilization of hospital emergency room services and unnecessary initial patient hospitalization and readmissions. They intend to coordinate patient care with primary care physicians, clinics, nursing homes, hospitals, MLTCPs and others in the immediate community with the goal of an efficient and cost effective delivery of measurable, quality services based on assessed need and outcome analysis.

The Hebrew Home for the Aged at Riverdale described their established relationships with over 500 different community care and service providers as well as multiple local and state governmental agencies. They have participated in efforts to build more integrated health provider information networks, such as the Bronx Regional Health Information Organization (RHIO).

The applicant provided data for each county requested, including age/gender distribution and socio-economic status by county and discussed the disparities and poorer health correlations along with preventable hospitalizations. The proposed Elderserve CHHA intends to extend the culturally sensitive outreach practices for serving the diverse immigrant populations that are currently offered through their other programs to ensure access to these underserved populations.

The applicant identified neighborhoods that are medically underserved and which lack adequate access to home and community-based services or have high numbers of uninsured and inadequate access to primary care. There are also high rates of asthma, obesity, diabetes, tobacco and alcohol use and hypertension in these neighborhoods. The applicant elaborated on diseases that are most prevalent in the Medicare and dual-eligible populations and described quality of health indicators which demonstrate a high proportion of at risk populations. The applicant provided a breakdown of these health status indicators by county that included an analysis of solutions through education, healthcare monitoring, nutritional programs, medication monitoring, home safety modifications, and other prevention strategies they will implement through their programs.

Recommendation

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

## Programmatic Analysis

### Background

The Hebrew Home for the Aged at Riverdale is an existing not-for-profit nursing home located at 5901 Palisades Avenue, Riverdale, New York 10471 (Bronx County), which currently operates ElderServe Long Term Home Health Care Program (LTHHCP), just recently relocated from 6 Executive Plaza, Yonkers, New York 10701 (Westchester County), to 890 Garrison Avenue, Second Floor, Bronx, New York 10474 (Bronx County). The LTHHCP is currently approved to serve Bronx, New York, and Westchester 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 LTHHCP into a CHHA, and to add Kings, Queens, Richmond, Nassau, and Suffolk Counties to their approved geographic service area. The new CHHA will ultimately replace the existing LTHHCP, will be named The Hebrew Home for the Aged at Riverdale, d/b/a ElderServe Certified Home Health Care Agency, and will be located at the LTHHCP's current location of 890 Garrison Avenue, Second Floor, Bronx, New York 10474 (Bronx County). The applicant is also seeking approval to establish three new additional practice locations / branch offices for the proposed CHHA, to be located at 1484 First Avenue, New York, New York 10075 (New York County), 2555 Ocean Avenue, Brooklyn, New York 11229 (Kings County), and 8002 Kew Gardens Road, Kew Gardens, New York 11415 (Queens County).

The Hebrew Home for the Aged at Riverdale, d/b/a ElderServe Certified Home Health Care Agency will provide the following home health care services: home health aide; medical social services; medical supplies, equipment, and appliances; nursing; nutritional services; occupational therapy, personal care; physical therapy, and speech language pathology.

The Hebrew Home for the Aged at Riverdale, d/b/a ElderServe Long Term Home Health Care Program, is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

<b>Financial Analysis</b>
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Operating Budget

The applicant has submitted an operating budget for the CHHA, in 2012 dollars, for the first and third years of the CHHA, summarized as follows:

**CHHA**

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,165,971	\$22,101,803
Expenses	<u>7,265,031</u>	<u>21,775,842</u>
Excess of Revenues over Expenses	(\$99,060)	\$325,961

Expenses during the first year are itemized as follows:

	<u>Total Cost</u>	<u>Visit/Hours</u>	<u>Cost Per Visit/Hour</u>
Nursing	\$965,197	9,246	\$104.39
Physical Therapy	408,614	4,568	\$89.45
Occupational Therapy	83,996	939	\$89.45
Speech Pathology	21,736	243	\$89.45
Medical Social Services	230,726	2,042	\$112.99
Nutrition	15,902	136	\$116.93
Home Health Aide*	<u>5,538,860</u>	260,982	\$21.22
Total	<u>\$7,265,031</u>		
<i>*Hours</i>			

Expenses during the third year are itemized as follows:

	<u>Total Cost</u>	<u>Visit/Hours</u>	<u>Cost Per Visit/Hour</u>
Nursing	\$2,887,382	28,572	\$101.06
Physical Therapy	1,224,783	14,112	\$86.79
Occupational Therapy	252,038	2,904	\$86.79
Speech Pathology	65,614	756	\$86.79
Medical Social Services	691,865	6,312	\$109.61
Nutrition	47,655	420	\$113.46
Home Health Aide*	<u>16,606,505</u>	806,400	\$20.59
Total	<u>\$21,775,842</u>		
<i>*Hours</i>			

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	44.18%	18.83%
Medicaid Managed Care	44.17%	70.00%
Medicare Fee-For-Service	7.80%	7.82%
Medicare Managed Care	1.27%	1.25%
Charity Care	2.58%	2.10%



The applicant used a case mix index of 1.00 in their reimbursement rate assumptions.

Expense and utilization assumptions are based on other 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 \$3,629,307, appear reasonable based on two months of third year expenses. The applicant has indicated that they will provide equity to be derived from operations to meet the working capital requirements. Presented as BFA Attachment A are the 2010 certified financial statements and the 2011 internal financial statements of Hebrew Home for the Aged at Riverdale, which indicates the availability of sufficient funds to meet the working capital equity contribution.

The submitted budget indicates that the applicant will achieve an excess of revenues over expenses of (\$99,060) and \$325,961 during the first and third years of operation, respectively. Revenues are based on current payment rates for Certified Home Health Agencies. The Medicaid Episodic Payment reimbursement rate for labor is projected at \$4,322. The submitted budget appears reasonable.

As shown on Attachment A, the entity had an average positive working capital position and an average positive net asset position during 2010 through 2011. Also, the applicant achieved an average positive change in net assets of \$3,634,530 during 2010 through 2011. The applicant has indicated that they have had a history of being successful in receiving contributions and grants, which average \$4,019,880 during 2010 and 2011.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner; and contingent approval is recommended.

#### Recommendation

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

## Attachments

BFA Attachment A	2010 certified financial statement and 2011 internal financial statement of The Hebrew Home For The Aged at Riverdale.
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INTERNAL FINANCIALS  
UNAUDITED

## THE HEBREW HOME FOR THE AGED AT RIVERDALE

## BALANCE SHEET

DECEMBER 31, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
ASSETS		
Current assets		
Cash	\$ 4,258,644	\$ 814,248
Cash - resident funds	516,637	546,143
Investments	5,107,257	5,083,984
Accounts receivable - net	16,588,438	16,070,506
Contributions receivable - current	134,391	589,891
Due from third parties	7,352	1,587,349
Due from related parties	3,551,755	1,992,470
Other current assets	<u>3,080,527</u>	<u>4,105,434</u>
Total current assets	<u>33,245,001</u>	<u>30,790,025</u>
Assets limited as to use		
Retirement plan investments	298,645	
Reserve funds		
Replacement reserve fund	5,774,928	5,087,303
Sinking funds	<u>6,801,457</u>	<u>6,064,595</u>
Total assets limited as to use	<u>12,875,030</u>	<u>11,151,898</u>
Noncurrent assets		
Fixed assets - net	62,691,255	62,684,766
Capitalized museum and art collections	7,584,717	7,531,067
Investments	2,774,998	2,391,223
Due from related parties	3,190,348	2,377,387
Contributions receivable - long term	<u>1,396,002</u>	<u>1,955,794</u>
Total noncurrent assets	<u>77,637,320</u>	<u>76,940,237</u>
Total assets	<u>\$ 123,757,351</u>	<u>\$ 118,882,160</u>

INTERNAL FINANCIALS  
UNAUDITED

## THE HEBREW HOME FOR THE AGED AT RIVERDALE

## BALANCE SHEET

DECEMBER 31, 2011 AND 2010

	2011	2010
LIABILITIES AND NET ASSETS		
Current liabilities		
Accounts payable and accrued expenses	\$ 21,802,577	\$ 23,985,272
Accrued pension cost	1,400,000	1,200,000
Resident funds	516,637	546,143
Current portion of annuity obligations	31,729	30,709
Current portion of loans payable and capital lease obligations	2,794,239	2,791,248
Current portion of due to related parties		824,854
Current portion of estimated due to third parties	2,210,387	2,297,351
Current portion of mortgages payable	1,585,177	1,495,138
Current portion of retirement benefits payable	45,763	43,416
Total current liabilities	<u>30,386,509</u>	<u>30,222,131</u>
Long-term liabilities		
Accounts payable - non current	220,851	
Annuity obligations	273,925	275,567
Loans payable and capital lease obligations	3,879,751	1,977,605
Due to related parties	866,244	3,091,763
Accrued pension cost	11,097,598	8,917,773
Due to third parties	3,201,481	6,437,392
Mortgages payable	57,306,346	58,891,533
Retirement benefits payable	1,375,394	1,136,308
Total liabilities	<u>113,668,099</u>	<u>110,945,072</u>
Net assets (deficit) (Exhibit B)		
Unrestricted	2,212,145	(735,841)
Temporarily restricted	3,877,107	4,612,929
Permanently restricted	4,060,000	4,060,000
Total net assets	<u>10,149,252</u>	<u>7,937,088</u>
Total liabilities and net assets	<u>\$ 123,757,351</u>	<u>\$ 118,882,160</u>

THE HEBREW HOME FOR THE AGED AT RIVERDALE  
STATEMENT OF ACTIVITIES

INTERNAL FINANCIALS  
UNAUDITED

YEARS ENDED DECEMBER 31, 2011 AND 2010

	2011			2010		
	Unrestricted	Temporarily Restricted	Total	Unrestricted	Temporarily Restricted	Total
Operating activity						
Operating revenues						
Net resident and community programs service revenues	\$ 81,098,382	\$	\$ 81,098,382	\$ 81,788,974	\$	\$ 81,788,974
Other revenue	2,868,253		2,868,253	1,204,460		1,204,460
Net investment income	32,018		32,018	17,094		17,094
Contributions and grants	2,304,184		2,304,184	2,421,156		2,421,156
Actuarial change in annuity obligations	(16,996)		(16,996)	(48,888)		(48,888)
Net assets released from restriction:	1,625,966	\$ (1,625,966)		1,666,669	\$ (1,666,669)	
Total revenues from operations	87,911,807	(1,625,966)	86,285,841	87,049,465	(1,666,669)	85,382,796
Operating expenses						
Salaries and employee benefits	48,348,728		48,348,728	50,163,310		50,163,310
Supplies and expenses (including interest of \$3,663,228 in 2011 and \$3,608,327 in 2010)	32,339,122		32,339,122	30,895,451		30,895,451
Total operating expenses before depreciation and amortization	80,687,869		80,687,869	81,058,761		81,058,761
Net operating profit (loss) before depreciation and amortization:	7,223,947	(1,625,966)	5,597,981	5,990,704	(1,666,669)	4,324,035
Depreciation and amortization	(6,018,184)		(6,018,184)	(6,253,016)		(6,253,016)
Net operating profit (loss)	1,205,763	(1,625,966)	(420,203)	(262,312)	(1,666,669)	(1,928,981)

THE HEBREW HOME FOR THE AGED AT RIVERDALE

STATEMENT OF ACTIVITIES

YEARS ENDED DECEMBER 31, 2011 AND 2010

INTERNAL FINANCIALS  
UNAUDITED

	2011			2010				
	Unrestricted	Temporarily Restricted	Permanently Restricted	Total	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Nonoperating activity								
Net investment income	\$ 758,167	\$ 104,844	\$	\$ 863,011	\$ 474,871	\$ 240,982	\$	\$ 715,473
Contributions and grants	5,163,841	788,170		5,952,011	1,262,663	825,085		2,087,750
Gain on mortgage refinancing								
Bad debt loss								
Net assets released from restrictions	2,870	(2,870)			965,588	(965,588)		
Change in net assets before other changes	7,130,641	(735,822)		6,394,819	2,440,812	(1,566,570)		\$74,242
Transfers to related parties	(1,168,637)			(1,168,637)	(5,318,421)			(5,318,421)
Adjustment to reflect pension funded status	(3,014,018)			(3,014,018)	(323,517)			(323,517)
Change in net assets	2,947,986	(735,822)		2,212,164	(3,201,136)	(1,566,570)		(4,767,936)
Net assets (deficit) - beginning of year	(735,841)	4,612,929	\$ 4,060,000	7,937,088	2,455,285	6,179,499	\$ 4,060,000	12,704,784
Net assets (deficit) - end of year (Exhibit A)	\$ 2,212,145	\$ 3,877,107	\$ 4,060,000	\$ 10,149,252	\$ (735,841)	\$ 4,612,929	\$ 4,060,000	\$ 7,937,088

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

**December 6, 2012**

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

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

**Certified Home Health Agency – Construction**

**Exhibit #9**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121255 C	Visiting Nursing Association of Western New York, Inc. (Cattaraugus County) Mr. Booth – Recusal Ms. Hines – Recusal Mr. Robinson - Recusal	No Recommendation

**NEW YORK STATE DEPARTMENT OF HEALTH**  
**INTEROFFICE MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:** Charles P. Abel  
Acting Director  
Division of Health Facility Planning

**SUBJ:** 121255  
Visiting Nurse Association of Western New York, Inc.

**DATE:** November 29, 2012

**Background**

Since the Establishment and Project Review Committee meeting held on November 15, 2012, the applicant has submitted a revision to its Certificate of Need application to remove Livingston, Monroe and Ontario Counties from the counties for which it is requesting approval for expansion. The Department accepts and recommends approval of this revised application. The exhibit has been revised from the one that was presented at the Establishment and Project Review Committee to reflect this change.



# Public Health and Health Planning Council

Project # 121255-C  
**Visiting Nurse Association of Western New York, Inc.**

**County: Erie (Williamsville)**  
**Purpose: Construction**

**Program: Certified Home Health Agency**  
**Submitted: April 18, 2012**

## Executive Summary

### Description

Visiting Nurse Association of Western New York, Inc. is an existing not-for-profit corporation that operates a certified home health agency (CHHA) with approval to provide services in Allegany, Chautauqua, Erie, Genesee and Niagara counties; a special needs CHHA with approval to provide services in Cattaraugus, Orleans and Wyoming counties; and a Long Term Home Health Care Program (LTHHCP) with approval to provide services in Erie and Niagara counties.

The applicant is requesting approval to expand the service area of their CHHA into Steuben County and to convert their special needs CHHA to a general service CHHA. Upon approval of this application, they will have a CHHA with approval to provide services to the residents of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Steuben and Wyoming counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to Section 760.5 of Title 10 NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHAs. Visiting Nurse Association of Western 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-

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 to a broad effort to promote the development of care management arrangements for Medicaid recipients.

DOH Recommendation  
Contingent Approval.

### Need Summary

Visiting Nurse Association of Western New York, Inc. addressed each county specifically by their unique needs and named the initiatives and programs that will address and already do address specific issues in each county they propose to serve. VNA's extensive Kaleida Health infrastructure and resources support the operations and management of the VNA and will assure cost effective implementation of CHHA services in each of the counties requested.

### Program Summary

Visiting Nurse Association of Western 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.

Budget:	<i>Revenues:</i>	\$ 15,003,675
	<i>Expenses:</i>	<u>12,994,666</u>
	<i>Gain/(Loss):</i>	\$ 2,009,009

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 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

**December 6, 2012.**

## Need Analysis

### Background

Visiting Nurse Association of Western New York, Inc. is an existing not-for-profit corporation that operates a certified home health agency (CHHA) with approval to provide services in Allegany, Chautauqua, Erie, Genesee and Niagara counties, a special needs CHHA with approval to provide services in Cattaraugus, Orleans and Wyoming counties and a Long Term Home Health Care Program with approval to provide services in Erie and Niagara counties.

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 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.

Applications that were not presented to the Public Health and Health Planning Council with a recommendation for approval at either the August 2012 or October 2012 meetings were considered deferred. The department notified RFA applicants that we are exercising our authority under the RFA Section VII.D.5 to seek clarifications and revisions of applications from those applicants whose applications have been deferred. Letters dated September 17<sup>th</sup> and 27<sup>th</sup> were sent to these applicants through NYSECON and included information related to the review and evaluation criteria and characteristics of approved applicants.

Additionally, the opportunity to arrange a meeting or phone conference with the Division of Home and Community Based Services to discuss the RFA criteria that was used to evaluate each application was made available to each applicant

### Competitive Review

The CON determination of need was based on the applicant's response to the RFA which includes any additional information submitted by the applicant in response to the aforementioned September 17<sup>th</sup> and 27<sup>th</sup> letters. The applications were reviewed 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;
- Description of a 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 Visiting Nurse Association of Western New York, Inc. (VNA) is affiliated with Kaleida Health and will utilize the resources of the Kaleida Integrated Health System to assure care coordination and continuity of care with Kaleida Health Hospitals through relationships with their discharge planners, in addition to the systems' clinics, long term care facilities, labs and providers, etc. Kaleida Health is also a resource to the VNA in the development of new partnerships with external providers, including other hospital discharge planners. The VNAs' electronic medical record system is also interoperable with Kaleida Health as well as with many external providers.

VNA has signed participating provider agreements for the MLTCPs with Elder Plan, Centers Plan for Healthy Living, Fidelis and VNS NY CHOICE. They have also signed a Letter of Intent with VNS NY CHOICE to enter into a partnership agreement that enables VNA to provide case management and utilization review activities in VNA's current service area. Expansion of VNA's service area into the requested counties will expand the scope of the partnership with VNS NY CHOICE and may present opportunities to expand its current MLTCP agreements into additional counties to enhance implementation of MRT #90 MLTC enrollment.

VNA provided a detailed county specific description which addresses how approval of their application will address the factors listed in section 709.1(a) of Title 10. The VNA will facilitate enrollment in public health insurance programs including Medicaid Managed Care for each of their eligible patients. They provide home based care, disease management and patient education programs that will help meet the growing needs of the high risk populations.

VNA addressed each county specifically by their unique needs and named the initiatives and programs that will address and already do address specific issues in each county they propose to serve. They provided a detailed gap analysis in each county and specified how their programs will meet the needs of the underserved in each community through their delivery of innovative, technology based and cost effective home care programs. They provided normative criteria or age and sex specific utilization rates; in and out migration issues; long range planning needs; and their VNA education, training and community outreach initiatives and programs.

VNA's extensive Kaleida Health infrastructure and resources support the operations and management of the VNA and will assure cost effective implementation of CHHA services in each of the counties requested. They emphasized care coordination for their patients that begin with communication and follow-up with all care entities. The use of electronic medical records and their Telehealth Program support their efforts, in addition to their participation in a Care Transitions Program with local hospitals to promote patient self-management and reduction of emergency room and inpatient utilization.

#### Recommendation

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

## Programmatic Analysis

### Background

Visiting Nurse Association of Western New York, Inc. is an existing not-for-profit corporation that operates a certified home health agency (CHHA) with approval to provide services in Allegany, Chautauqua, Erie, Genesee and Niagara counties, a special needs CHHA with approval to provide services in Cattaraugus, Orleans and Wyoming counties and a long term home health care program with approval to provide services in Erie and Niagara counties.

The applicant is requesting approval to expand the service area of their Article 36 certified home health agency into Steuben County and to convert their Article 36 special needs CHHA to a general service CHHA. Upon approval of this application, they will have a CHHA with approval to provide services to the residents of Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Steuben and Wyoming counties.

The applicant proposes to provide the following home health services:

Nursing	Home Health Aide	Medical Supplies, Equipment, and Appliances
Physical Therapy	Occupational Therapy	Respiratory Therapy
Nutrition	Speech Language Pathology	Medical Social Services

Visiting Nurse Association of Western New York, Inc. is currently in compliance with all applicable codes, rules and regulations.

Recommendation

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

<h2>Financial Analysis</h2>
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Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee-For-Service	\$1,924,658	\$2,292,903
Medicare Fee-For-Service	8,344,114	10,180,771
Commercial Fee-For-Service	1,984,753	2,530,001
Total Revenues	\$12,253,525	\$15,003,675
 Expenses	 <u>10,974,743</u>	 <u>12,994,666</u>
 Excess of Revenues over Expenses	 <u>\$1,278,782</u>	 <u>\$ 2,009,009</u>

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	18%	19%
Medicare Fee-For-Service	59%	59%
Commercial Fee-For-Service	19%	19%
Charity Care	4%	3%

Expense and utilization assumptions are based on the existing CHHA Program’s historical experience. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$2,165,778, 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 Kaleida Health Home Care Affiliates, Inc. which indicates the availability of sufficient funds to meet the working capital contribution.

The submitted budget indicates an excess of revenues over expenses of \$1,278,782 and \$2,009,009 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 2010 and 2011. The entity achieved an average operating income of \$6,022,759 during 2010 and 2011.

Presented as BFA Attachment B is the 2012 internal financial statements of Kaleida Health/HomeCare Affiliates. As shown on Attachment B, the facility had a positive working capital position and a positive net asset position in 2012. The facility achieved an operating excess of revenues over expenses of \$3,037,241 in 2012.

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	2010-2011 Certified financial statements of Kaleida Health Home Care Affiliates
BFA Attachment B	2012 internal financial statements of Kaleida Health Home Care Affiliates
BFA Attachment C	Kaleida Health Organizational Chart

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

**December 6, 2012**

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**B APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF  
HEALTH CARE FACILITIES**

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

**CON Applications**

**Dialysis Services – Establish/Construct**

**Exhibit #10**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121106 B	Enchanted Dialysis, LLC d/b/a Newark Wayne Dialysis Center (Wayne County)	Contingent Approval

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #11**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121017 B	Surgery of Tomorrow, LLC (Kings County)	Contingent Approval
2.	121393 B	IDHC, LLC d/b/a Island Digestive Health Center (Suffolk County)	Contingent Approval
3.	121412 B	LIEAC, LLC d/b/a Long Island Digestive Endoscopy Center (Suffolk County)	Contingent Approval
4.	122071 B	21 Reade Place, ASC, LLC (Dutchess County)	Contingent Approval

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

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C.</u> <u>Recommendation</u>
1.	122069 E	New Alternatives for Children, Inc. (New York County)	Contingent Approval

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

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C.</u> <u>Recommendation</u>
1.	122046 E	Hamilton Park Nursing and Rehabilitation Center (Kings County)	Contingent Approval

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

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C.</u> <u>Recommendation</u>
1.	121120 E	Premier Home Health Care Services, Inc. (Kings County)	Contingent Approval
2.	121263 E	Selfhelp Family Home Care, Inc. (New York County)	Contingent Approval

**Certificate of Incorporation****Exhibit #15**

	<u>Applicant</u>	<u>E.P.R.C.</u> <u>Recommendation</u>
1.	AIDS Community Services of Western New York, Inc.	Approval
2.	New York Foundation for Elder Care	Approval
3.	Horizon Human Services, Inc.	Approval
4.	Jewish Home Foundation, Inc.	Approval

**Restated Certificate of Incorporation****Exhibit #16**

	<u>Applicant</u>	<u>E.P.R.C.</u> <u>Recommendation</u>
1.	Nassau County AHRC Foundation, Inc.	Approval
2.	St. Elizabeth Seton Children's Foundation	Approval

3. Asian & Pacific Islander Coalition on HIV/AIDS, Inc. Approval

**Certificates of Dissolution**

**Exhibit #17**

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
1. The Childbirth Connection Foundation	Approval
2. Pinnacle Healthcare, Inc.	Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #18**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2019 L	Angela Dawn Donahue d/b/a Quality Home Health Care (Otsego County)	Contingent Approval
2012 L	Care Connection Home Care, LLC (Nassau, Queens, Suffolk Counties)	Contingent Approval
1941 L	D2 Enterprises, Inc. d/b/a Home Helpers #58507 (Westchester County)	Contingent Approval
1663 L	Finest Home Care Corp. (Bronx, Richmond, Kings, Westchester, New York, Queens Counties)	Contingent Approval
1921 L	Golden Touch Home Health Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
1984 L	Goldenhearts Elderly Care Services, Inc. (Bronx, New York, Kings, and Queens Counties)	Contingent Approval
1978 L	Health and Comfort Home	Contingent Approval



	Care, Inc. (New York, Kings, Queens, Bronx, and Richmond Counties)	
1697 L	Jacqueline Asante d/b/a Van Cortlandt Home Healthcare Agency (Bronx, County)	Contingent Approval
1809 L	LH Wellbeing Care, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2002 L	Paraclete Home Health Care, LLC (Nassau, Suffolk and Queens Counties)	Contingent Approval
1997 L	PSC Community Support Services, Inc. d/b/a Blue Parasol (New York, Kings, Queens, Bronx and Richmond Counties)	Contingent Approval
2014 L	Responsible Care Staffing, Inc. (Bronx and New York Counties)	Contingent Approval
2003 L	MJO Enterprises, Inc. d/b/a Right at Home (Nassau and Queens Counties)	Contingent Approval
2026 L	SARA Companion Services, Inc. (Nassau, Suffolk, Queens, Kings, New York, Bronx, and Richmond Counties)	Contingent Approval
1934 L	Today's Homecare, Inc. (Bronx, Kings, New York, Queens and Richmond Counties)	Contingent Approval
2044 L	York Healthcare, LLC (Bronx, Richmond, New York,	Contingent Approval

	Nassau, Kings, and Queens Counties)	
1988 L	Advance Home Care, LLC d/b/a Sincere Care Agency (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
1993 L	Human Care, LLC (New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)	Contingent Approval
2012 L	Light 101, Inc. (Bronx, Queens, Kings, Richmond, New York and Westchester Counties)	Contingent Approval



# Public Health and Health Planning Council

Project # 121106-B

## Enchanted Dialysis, LLC d/b/a Newark Wayne Dialysis Center

**County:** Wayne (Newark)

**Program:** Dialysis Services

**Purpose:** Establishment and Construction

**Submitted:** March 1, 2012

### Executive Summary

#### Description

Enchanted Dialysis, LLC d/b/a Newark Wayne Dialysis, a proposed New York State business corporation, requests approval to establish and construct a freestanding 16-station chronic renal dialysis center at 1120 South Main Street, Newark (Wayne County). This application has been developed with the cooperation and support of Rochester General Health System, which is the passive member of Rochester General Health System Dialysis, Inc. (RGHSD). RGHSD owns 40% of the membership interests of Enchanted Dialysis. The remaining 60% is owned by Knickerbocker Dialysis, Inc., which is a wholly-owned subsidiary of DaVita of New York, Inc. DaVita of New York, Inc. is a wholly owned subsidiary of DaVita, Inc.

Enchanted Dialysis is an existing New York State limited liability company. Upon Public Health and Health Planning Council approval, the LLC will amend its articles of organization to include the purpose of operating the proposed diagnostic and treatment center. Enchanted Dialysis will be managed by its members. The applicant will enter into a consulting and administrative services agreement with DaVita Inc., under which DaVita Inc. will provide development, consulting and administrative services to the proposed center.

Total project costs are estimated at \$1,979,632.

#### DOH Recommendation

Disapproval as proposed. Contingent approval as amended by the Department, for 14 freestanding dialysis stations.

#### Need Summary

There are no dialysis facilities in Wayne County. The Department's Need methodology for dialysis services, as set forth in Title 10 NYCRR Part 709.4, indicates a need for 28 stations. This need will be met with the approval of this application and CON #121230-C (FMS-Southern Manhattan Dialysis), also to be located in Newark.

Contingent approval for 14 freestanding dialysis stations is recommended.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

The project costs associated with this application are \$1,979,632 and will be financed through equity of proposed members.

Budget:	<i>Revenues:</i>	\$ 2,908,379
	<i>Expenses:</i>	<u>2,581,970</u>
	<i>Gain/(Loss):</i>	\$ 326,410

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

The Finger Lakes HSA recommends approval for this application, as amended by the Department.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of Enchanted Dialysis, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed and dated Operating Agreement for Enchanted Dialysis, LLC, acceptable to the Department. [CSL, BFA]
7. Submission of a photocopy of an executed and dated Certificate of Incorporation of Rochester General Health System Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the current Bylaws of Rochester General Health System Dialysis, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the original Certificate of Incorporation of Rochester General Health System and any and all subsequent amendments thereto or restatements thereof, acceptable to the Department. [CSL]
10. Submission of a photocopy of the current Bylaws of Rochester General Health System, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and dated Certificate of Incorporation of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the current Bylaws of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed and dated Consulting and Administrative Services Agreement, acceptable to the Department. [CSL, BFA]
14. Submission of a photocopy of an executed and dated Application for Authority for DaVita, Inc., acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed and dated Lease Agreement, acceptable to the Department. [CSL, BFA]

**Approval conditional upon:**

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of 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 April 30, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**

# Need Analysis

## Background

Newark Wayne Dialysis Center seeks to establish a 16-station chronic renal dialysis facility to be located at 1120 South Main Street, Newark, 14513, in Wayne County.

## Analysis

Wayne County, which had a population of 93,436 in 2011, is the service area for the proposed facility. There are no dialysis facilities or stations in Wayne County.

The Department tracks statistics on populations with a higher probability of contracting End Stage Renal Disease (ESRD), which requires dialysis. Wayne County's average elderly population is higher than the overall state average but the minority population is lower than the proportion for the state as a whole.

<u>Ages 65 and Over 2011:</u>	14.80%	<u>State Average:</u>	13.7%
<u>Nonwhite 2011:</u>	9.04%	<u>State Average:</u>	42.0%

Those over the age of 65 are the largest users of dialysis services. In Wayne County, the 65+ age group represents 14.8% of the population, slightly above the statewide average of 13.7 percent. Type II diabetes is the leading cause of ESRD, and minority groups are at a greater risk of developing the disease. However, the non-white population of Wayne County is 9.04 percent, which is considerably lower than the statewide average of 42.0 percent.

The Department's methodology to estimate capacity for chronic dialysis stations is set forth in Section 709.4 of Title 10 and is as follows:

One freestanding station represents 702 treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which can accommodate 15 patients per week. This is a potential  $780 \times 52 \text{ weeks} \times 90\% = 702$ .

One hospital based station is calculated at 499 treatments per year per station. This is the result of  $2.0 \text{ shifts/day} \times 6 \text{ days/week} \times 52 \text{ weeks} \times 80\%$ . One hospital based station can treat 3 patients per year.

Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are freestanding, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on the establishment of additional freestanding stations.

The projected need for 2017 is 28 stations, as detailed in the table below.

	<b>2012</b>		<b>2017</b>	
	<i>Total Patients Treated</i>	<i>Total Residents Treated</i>	<i>Projected Total Patients Treated</i>	<i>Projected Residents Treated</i>
	0	116	0	125
Freestanding Stations Needed	0	26	0	**28
Existing Stations	0	0	0	0
Existing Stations w/Approval of CON	***28	***28	28	***28
Unmet Need Without Approval	0	26	0	***28
Unmet Need With Approval	0	***-2	0	***0

\*\* Projected Need: Based upon a conservative estimate of a one percent annual increase in residents treated

\*\*\* The station numbers are inclusive of stations contained in another review being submitted concurrently

A 1.5% growth rate was used to account for a projected population decrease from 2010 to 2015 of 0.5%. This growth rate takes the projected increase in the elderly population of 13.2% into account (Source: Cornell University <http://pad.human.cornell.edu/counties/projections.cfm>).

Conclusion

There are currently no dialysis stations in Wayne County. Although the county's minority population is relatively low, its population of persons 65 and older, white and non-white, is of a size sufficient to warrant the approval of 28 stations, as shown by application of the Section 709.4 need methodology to the jurisdiction. This need would be met with the approval of this application and CON #121230-C, FMS Southern Manhattan Dialysis, for 14 stations each.

Recommendation

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

**Programmatic Analysis**

Background

Establish a diagnostic and treatment center to provide chronic renal dialysis services.

<b>Proposed Operator</b>	<b>Enchanted Dialysis, LLC</b>
Doing Business As	Newark Wayne Dialysis Center
Site Address	11230 South Main Street, Newark
Stations	16
Schedule	At least 2.5 shifts per day, 6 days per week by year 3
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	7.9 FTEs / 16.4 FTEs
Medical Director(s)	Marvin Grieff
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Clifton Springs (7.3 miles) for back-up dialysis services and Newark-Wayne Community Hospital (1.8 miles) for other back-up services.

Character and Competence

The members of the LLC are:

<u>Name</u>	
Rochester General Health System Dialysis, Inc	40%
Mark C. Clement (manager)	
Hugh R. Thomas	
Richard T. Gangemi, MD (manager)	
Knickerbocker Dialysis, Inc.	60%
Javier J. Rodriguez (manager)	
James A. Greenwood (manager)	
Steven Grieger (manager)	

The officers/directors of each corporation were subjected to a character and competence review, as was the proposed medical director.

Rochester General Health System Dialysis, Inc. has as its passive parent Rochester General Health System, Inc. which in turn is a not-for-profit health system which is the passive parent over several health care facilities.

Knickerbocker Dialysis, Inc. is the operator of Bronx Dialysis Center and its 14 ESRD extension clinics. DaVita of New York, Inc. is the sole owner of the shares of Knickerbocker Dialysis.

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 associated New York State 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.

**Recommendation**

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

<h2>Financial Analysis</h2>
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**Operating and Binding Letter Agreement**

The applicant has submitted a draft Operating and Executed Binding Letter Agreement, dated December 1, 2011, which confirms the agreement between Knickerbocker Dialysis, Inc., a New York corporation (Knickerbocker) and affiliate of DaVita Inc. (DaVita) , and Rochester General Hospital, a New York not-for-profit corporation or an affiliate thereof (collectively, RGH) with respect to the establishment of a joint venture between Knickerbocker and RGH (the "JV Company) for the purposes of constructing, developing and operating a renal dialysis facility in or about Rochester, New York. The terms of their membership interest ownership are summarized below:

<u>Members</u>	<u>Initial Capital Contribution</u>	<u>Number of Units</u>	<u>Percentage Interest</u>
Knickerbocker Dialysis. Inc	\$600	600	60%
Rochester General Hospital	\$400	400	40%
<b>Total</b>	<u>\$1,000</u>	<u>1,000</u>	<u>100%</u>

Capital contributions are based on a proportional membership interest. Attachment F, the pro-forma balance sheet, indicates 100% equity contributions from the members.

**Lease Rental Agreement**

The applicant has submitted a draft lease rental agreement for the site to be occupied, the terms of which are summarized below:

- Premises:* 8,100 square feet located at 1120 South Main Street, Newark, N.Y.
- Lessor:* Christopher P. Avery (individual)
- Lessee:* Enchanted Dialysis, LLC
- Term:* 120 months
- Rental:* Year 1: \$72,900 per year (\$6,075 per month), (\$9per sq. ft.). Rent shall escalate 2% annually, above the rent of prior year.
- Provisions:* Triple Net Lease.

The proposed lease agreement is an arm's length transaction since neither party is related. The applicant has submitted an affidavit stating as such. Rent reasonableness letters have been submitted from licensed realtors.

**Consulting and Administrative Services Agreement**

The applicant has submitted a proposed agreement, which is summarized below:

- Facility:* Enchanted Dialysis, LLC d/b/a Newark Wayne Dialysis
- Contractor:* DaVita, Inc.
- Term:* Commence on effective date and shall continue until the 25<sup>th</sup> anniversary of the day immediately preceding such date unless either party terminates the agreement by providing at least 90 days prior written notice before end of each annual term in progress.
  
- Duties of the Consultant:* Consultant, will provide the following:  
 personnel training, monitoring and oversight; supplies and prescription drugs; billing and collecting; bookkeeping and accounting; funds management; insurance; policy and procedure development; furnish hardware and software; quality assurance and review; licenses, permits and provider numbers; compliance assistance and legal actions.
  
- Development Services /Fee:* Assist with site location, renovation/construction, financing assistance, federal and state regulatory approvals. Fee equals 7% of the total development costs (.07 x \$1,132,000 = \$79,240) incurred to renovate/construct the Center. (.3 X \$79,240 = \$23,772) paid @ start of construction. Balance \$55,468 paid two separate installments of \$27,734 each, during year 2 and 3.
  
- Compensation:* Year one: \$87,700; Subsequent years to be negotiated. Years two and three are budgeted at \$181,788\* and \$233,763\*, respectively. \*(Includes above referenced development fee).

**Total Project Cost and Financing**

Total project cost for renovations and the acquisition of movable equipment is estimated at \$1,979,632 itemized as follows:

Renovation & Demolition	\$1,056,780
Design Contingency	105,678
Construction Contingency	105,678
Architect/Engineering Fees	78,280
Planning Consultant fees	33,700
Other Fees	30,900
Movable Equipment	495,183
Telecommunications	60,616
CON Application Fee	2,000
CON Processing Fee	<u>10,817</u>
Total Project Cost	<u>\$1,979,632</u>

The applicant will finance total project cost with cash.

**Operating Budget**

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

	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$1,227,582	\$2,908,379
Expenses:		
Operating	\$1,109,017	\$2,331,803



Capital	<u>247,222</u>	<u>250,167</u>
Total Expenses	\$1,356,239	\$2,581,970
Net Income	(\$128,657)	\$326,409
Utilization: (treatments)		
Hemodialysis	3,900	9,204
Total		
Cost Per Treatment	\$347.75	\$280.53

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

	<u>Year One</u>	<u>Year Three</u>
Medicare- Fee-for-Service	72%	72%
Medicaid-Fee-for-Service	9%	9%
Commercial-Fee-for-Service	13%	14%
Commercial- M C	6%	5%

Expense and utilization assumptions are based on Rochester General Hospital's experience with providing dialysis services to residents of Wayne County, which is the proposed service area. There are currently no dialysis services located in Wayne County and all residents needing dialysis services travel to an adjacent county. Rochester General's Hospital's experience is based upon their experience serving Wayne County residents at their facility in Monroe County.

The applicant's budget is based upon 16 dialysis stations. The Department's methodology for chronic dialysis station utilization indicates that the stated year 3 volume can be achieved utilizing 14 stations. A reduction to 14 stations may marginally reduce revenue by negatively impacting utilization during certain peak periods. However, station reduction from the budgeted 16 to 14, may also marginally reduce budgeted capital equipment expense.

#### Capability and Feasibility

Total Project Costs will be met with equity proportional to membership interest from DaVita Inc. and Rochester General Hospital, as parents of each respective member. Presented as BFA Attachment B and C, are the financial summaries of DaVita, Inc., and Attachment D and E are the financial summaries of Rochester General Hospital, respectively, which shows sufficient equity.

Working capital requirement is estimated at \$430,328, based on two months' of third year expenses, which will be provided through proposed members equity. Presented as BFA Attachment F, is the pro-forma balance sheet of Enchanted Dialysis, LLC as of the first day of operation, which indicates positive shareholders' equity of \$2,409,960.

The submitted budget projects a net income of (\$128,657) and \$326,409 during the first and third years, respectively. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The operating budget appears reasonable.

Subject to 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

Proposed Organizational Chart for Enchanted Dialysis, LLC

BFA Attachment B	Financial Summary for DaVita Inc. - Audited 2011 and 2010
BFA Attachment C	Financial Summary for DaVita Inc. - Internal through March 31, 2012
BFA Attachment D	Financial Summary for Rochester General Hospital - Audited 2010 and 2009
BFA Attachment E	Financial Summary for Rochester General Hospital – Internal 2011 and through March 31, 2012
BFA Attachment F	Pro-forma Balance Sheet for Enchanted Dialysis, 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 6th day of December, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a free standing, 16-station chronic renal dialysis center to be located at 1120 South Main Street, Newark, 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:

121106 B

FACILITY/APPLICANT:

Enchanted Dialysis, LLC d/b/a Newark Wayne  
Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed with the consultation of legal counsel, in light of anti-kickback and self-referral laws, and it is concluded that proceeding with the proposal is acceptable. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of Enchanted Dialysis, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed and dated Operating Agreement for Enchanted Dialysis, LLC, acceptable to the Department. [CSL, BFA]
7. Submission of a photocopy of an executed and dated Certificate of Incorporation of Rochester General Health System Dialysis, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the current Bylaws of Rochester General Health System Dialysis, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of the original Certificate of Incorporation of Rochester General Health System and any and all subsequent amendments thereto or restatements thereof, acceptable to the Department. [CSL]
10. Submission of a photocopy of the current Bylaws of Rochester General Health System, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and dated Certificate of Incorporation of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of the current Bylaws of Knickerbocker Dialysis, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed and dated Consulting and Administrative Services Agreement, acceptable to the Department. [CSL, BFA]
14. Submission of a photocopy of an executed and dated Application for Authority for DaVita, Inc., acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed and dated Lease Agreement, acceptable to the Department. [CSL, BFA]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of 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 April 30, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237



# Public Health and Health Planning Council

## Project # 121017-B Surgery of Tomorrow, LLC

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

**Program:** Ambulatory Surgery Center  
**Submitted:** January 11, 2012

### Executive Summary

#### Description

Surgery of Tomorrow, LLC, a recently-formed limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC), to be certified as a single-specialty freestanding ambulatory surgery center (FASC) in the discipline of obstetric and gynecological surgery services (not including abortion). The center will be located at 1766 East 12th Street, Brooklyn, and will lease approximately 2500 SF in the basement level of the building. The site will include one operating room, pre/post-recovery area for one patient, along with the requisite support areas.

Surgery of Tomorrow, LLC has two members: Gregory Shifrin, M.D., who is Board-Certified in obstetrics and gynecology, and Ella Shifrin, who is Dr. Shifrin's wife and has experience administering his private practice. Each member will own 50% of the membership interests.

The applicant states they plan to utilize an Electronic Medical Record (EMR) system and fully integrate and exchange information with the Brooklyn Health Information Exchange (BHIX), an established Regional Health Information Organization (RHIO).

Surgery of Tomorrow states they are committed to seeking certification from one of the following health care accreditation entities: 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.

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 \$920,907.

#### 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 number of projected procedures is as follows:

Current Year:	0
First Year:	1,662
Third Year:	1,763

The majority of the projected cases are currently performed in the participating physicians' private offices, and a small number of cases may come from New York Methodist Hospital. This project will consolidate two private, office-based practices and bring them into an Article 28 single specialty freestanding ambulatory surgery center.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

Project costs will be met via members' investment.

Budget:	<i>Revenues:</i>	\$1,454,350
	<i>Expenses:</i>	<u>1,439,096</u>
	<i>Gain/ (Loss)</i>	\$ 15,254

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

## Recommendations

### Health Systems Agency

There will be no HSA recommendation for this application.

### Office of Health Systems Management

**Approval 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 Department of Health beginning in the second year of operation that will include the following data:
  - Actual utilization including procedures;
  - Breakdown of visits by payor source;
  - Number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - Number of emergency transfers to a hospital;
  - Percentage of charity care provided, and
  - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement that identifies, at a minimum, the populations and communities to be served by the center, including underserved populations such as racial and ethnic minorities, women, and handicapped persons. [RNR]
4. Documentation showing a transfer and affiliation agreement for emergency and backup services with New York Methodist Hospital. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed building lease that is acceptable to the Department. [BFA]
7. 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 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]
6. 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]
7. The applicant shall complete construction by June 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

Surgery of Tomorrow, LLC is seeking approval to establish and construct a single-specialty freestanding ambulatory surgery center (ASC) at 1766 East 12th Street, Brooklyn, 11229, in Kings County. The proposed ASC will provide obstetrics and gynecology services.

### Analysis

The service area for this project is Kings County. The proposed project is not located in a health professional shortage area for primary care services or in a medically underserved area/population. (HRSA)

There are 8 single specialty freestanding ambulatory surgery centers in Kings County as follows:

Orthopedics	1
Ophthalmology	2
Gastroenterology	2
Endoscopy	3

Additionally, Kings County also has 5 multi-specialty ASCs.

Dr. Shifrin and two other participating physicians have provided letters of interest demonstrating their commitment to perform 1,511 cases in the first year of project implementation. All of the participating physicians' have medical practices within the Center's service area and have, or will apply for, admitting privileges at New York Methodist Hospital.

The applicant has submitted an acceptable statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with consultation of the legal counsel.

### Conclusion

The proposed project will bring existing private practices into the regulatory environment of an Article 28 freestanding ambulatory surgery center. Since there are no other ASCs in the area dedicated to OB/GYN (non-abortion), the proposed facility will also not be duplicative of other ASC services.

### Recommendation

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

## Programmatic Analysis

### Background

The applicant proposes to establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	<b>Surgery of Tomorrow, LLC</b>
Site Address	1766 East 12 <sup>th</sup> Street, Brooklyn
Surgical Specialties	Obstetrical/Gynecological
Operating Rooms	0
Procedure Rooms	1
Hours of Operation	Monday through Friday from 7:30 am to 3:30 pm (Extended as necessary to accommodate patient needs).
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	8.87 FTEs / 9.26 FTEs
Medical Director(s)	Gregory Shifrin
Emergency, In-Patient and Backup Support Services Agreement and	Expected to be provided by New York Methodist Hospital 4.8 miles and 17 minutes



Distance	
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:

Gregory Shifrin, MD	50%
Ella Shifrin (manager)	50%

Dr. Shifrin is currently in private practice and Ms. Shifrin is a medical practice administrator.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's 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. Shifrin disclosed four open malpractice cases and one paid malpractice case in the last ten years.

Integration with Community Resources

The applicant has committed to the development of a formal outreach program. The center plans to work closely with its patients to education them regarding the availability of primary care services offered by local providers. Prior to leaving the center, each patient will be provided information concerning the local availability of primary care services.

The center is also aware that the Department recently conditionally approved four Phase I provider-led Medicaid health Homes in Kings County. If the project is approved, the center will investigate the potential of affiliating with an existing health home in Kings County.

A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services. The center plans to utilize an Electronic Medical Record system and to fully integrate and exchange information with Brooklyn Health Information Exchange, an established Regional Health Information Organization.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

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

Financial Analysis
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Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site; the terms are summarized below:

*Premises:* 2500 gross square feet located at 1766 East 12<sup>th</sup> Street, Brooklyn  
*Landlord:* Nerben, LLC  
*Lessee:* Surgery of Tomorrow, LLC  
*Term:* 10 years at \$72,000 (\$6000 per month) (\$28.80 per sq. ft.)  
 Renewal one 2-year term at \$75,600 per year  
*Provisions:* Utilities, Maintenance and Insurance

The applicant states the lease is a non-arm's length arrangement, as Gregory Shifrin, M.D. is a member of both the landlord (Nerben, LLC) and the applicant (Surgery of Tomorrow, LLC). Realtor letters have been provided attesting to the rental rate being of fair market value.

**Total Project Costs and Financing**

Total project cost for renovation and acquisition of moveable equipment is estimated at \$920,907, itemized as follows:

Renovation and Demolition	\$551,701
Design Contingency	55,170
Construction contingency	55,170
Architect/Engineering Fees	82,781
Other Fees	25,000
Movable Equipment	133,776
Telecommunications	10,283
CON Application Fee	2,000
CON Processing Fee	<u>5,026</u>
Total Project Cost	\$920,907

Project costs are based on an August 1, 2012 start date with a three month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$920,907
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**Operating Budget**

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,370,864	\$1,454,350
Expenses:		
Operating	\$1,230,939	\$1,287,865
Capital	<u>151,231</u>	<u>151,231</u>
Total Expenses	\$1,382,170	\$1,439,096
Net Income or (Loss)	(\$11,306)	\$15,254
Utilization: (procedures)	1,662	1,763
Cost Per Procedure	\$831.63	\$816.28

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

Medicaid Managed Care	29.2%
Medicare Fee-For-Service	7.5%
Commercial Fee-For-Service	60.8%
Charity	2.5%

Utilization assumptions are based upon the participating physicians' experiences in operating their private practices. The expense assumptions are in line with projections and experience at other FASCs in New York State, as well as the experience of Dr. Shifrin in his own private practice.

The CON will combine two existing office-based private practices, which will include the participation of three Board-Certified physicians in obstetrics and gynecology, accounting for the 1,662 projected procedures in the first year. Additionally, the applicant states that most of the procedures will be taken from the private practice setting, but a minimal number may migrate from the proposed back-up hospital, New York Methodist Hospital. The physicians practicing at the proposed FASC are: Gregory Shifrin, M.D., Tamila Selitsky, D.O., and Alexander Shifrin, M.D.

#### Capability and Feasibility

The total project cost of \$920,907 will be satisfied from the proposed members' personal resources.

Presented as BFA Attachment A is the statement of personal net worth, which indicates the members have sufficient liquid resources to meet this requirement.

Working capital requirements are estimated at \$239,850, which appears reasonable based on two months of third year expenses.

The working capital in the amount of \$239,850 will be provided from the members personal resources. A review of BFA Attachment A indicates the ability to meet the working capital requirement. Presented as BFA Attachment B is Surgery of Tomorrow, LLC pro-forma balance sheet that shows operations will start off with \$1,160,757 in positive equity.

Surgery of Tomorrow projects a first year operating loss of \$11,306 and by the third year, an operating excess of \$15,254. 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 Surgery of Tomorrow, LLC
BFA Attachment B	Pro-forma Balance Sheet of Surgery of Tomorrow, LLC
BFA Attachment C	Establishment Checklist for Ambulatory Care Sites
BHFP Attachment	Map

## Supplemental Information

#### Outreach

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the

applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** Beth Israel Medical Center  
Kings Highway Division  
3201 Kings Highway  
Brooklyn, New York 11239

No response.

**Facility:** New York Community Hospital of Brooklyn  
2525 Kings Highway  
Brooklyn, New York 11229

No response.

**Facility:** Coney Island Hospital  
2601 Ocean Parkway  
Brooklyn, New York 11235

No response.

**Facility:** Maimonides Medical Center  
4802 Tenth Avenue  
Brooklyn, New York 11229

No response.

#### Supplemental Information from Applicant

- Need and Sources of Cases

The source of cases will be those currently being performed in the offices of the applicant physicians. The applicant states that there are no other certified ASC's dedicated to OB/GYN (non-abortion) in Kings County and that the recognition of higher quality services at certified facilities will cause patients and insurers to prefer the services of an ASC as opposed to an office-based practice. The applicant also states that of the nearly 600,000 females aged 15-44 (standard child-bearing age) in Kings County, 22 percent are below the Federal poverty level. This is the primary population to be served by the proposed ASC.

- 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.

- 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.

OHSM Comment

In the absence of comments from area hospitals, the Department finds no basis for reversal or modification of the recommendation for contingent approval of the proposed facility 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 6th day of December, 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 providing obstetrical and gynecology services to be located at 1766 East 12<sup>th</sup> Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

121017 B

Surgery of Tomorrow, 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, to provide annual reports to the Department of Health beginning in the second year of operation that will include the following data:
  - Actual utilization including procedures;
  - Breakdown of visits by payor source;
  - Number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - Number of emergency transfers to a hospital;
  - Percentage of charity care provided, and
  - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an organizational Mission Statement that identifies, at a minimum, the populations and communities to be served by the center, including underserved populations such as racial and ethnic minorities, women, and handicapped persons. [RNR]
4. Documentation showing a transfer and affiliation agreement for emergency and backup services with New York Methodist Hospital. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed building lease that is acceptable to the Department. [BFA]
7. 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 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]
6. 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]

7. The applicant shall complete construction by June 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237





# Public Health and Health Planning Council

Project # 121393-B

**IDHC, LLC**  
**d/b/a Island Digestive Health Center**

**County: Suffolk (West Islip)**  
**Purpose: Establishment and Construction**

**Program: Ambulatory Surgery Center**  
**Submitted: May 17, 2012**

## Executive Summary

### Description

IDHC, LLC, an existing limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center that will be certified as a single-specialty freestanding ambulatory surgery center (ASC), specializing in gastroenterology procedures. The ASC will be located in leased space at 471 Montauk Highway, West Islip. Upon final approval of this project, IDHC, LLC will be renamed Island Digestive Health Center, LLC. The participating physicians, all Board-certified in gastroenterology, are converting their existing Suffolk County private office-based practices.

The proposed members of IDHC, LLC are as follows:

Advanced GI Endoscopy, LLC (Class A Member)	85.00%
John Poisson (Class B Member)	3.75%
Frank Principati (Class B Member)	3.75%
Karen Sablyak (Class B Member)	3.75%
Barry Tanner (Class B Member)	3.75%

The members of Advanced GI Endoscopy, LLC are as follows:

Kourosh Adhami, MD.	28.24%
Babak Danesh, MD.	5.88%
James Kohloser, D.O.	25.88%
Neil Lobo, MD.	28.24%
Krishnaiyer Subramani, MD.	11.76%

By virtue of their respective ownership interest in Advanced GI Endoscopy, LLC, the individual members have the following membership interest in IDHC, LLC:

Kourosh Adhami, MD.	24.004%
Babak Danesh, MD.	4.998%
James Kohloser, D.O.	21.998%
Neil Lobo, MD.	24.004%
Krishnaiyer Subramani, MD.	9.996%

Each Class B member is a member of Physicians Endoscopy, LLC (PELL), a national provider of administrative and consulting services to gastroenterological practices,

which has been approved by the Department on multiple occasions to provide administrative services to Article 28 facilities in New York State. The applicant will enter into an administrative services agreement and a development services agreement with PELL.

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 \$3,498,000.

### 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 applicant projects that the proposed ASC will perform 6,914 procedures in the first year of operations and 7,477 by the third year.

### 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 project costs will be met via equity of \$373,000 and a \$3,125,000 bank loan (6 yrs. @ 6.50%).

Budget:	<i>Revenues:</i>	\$ 4,864,137
	<i>Expenses:</i>	<u>3,925,764</u>
	<i>Gain/(Loss):</i>	\$ 938,373

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, 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 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 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]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment that is acceptable to the Department of Health. [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 executed and dated lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of IDHC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and dated Operating Agreement of IDHC, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of Advanced GI Endoscopy, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed and dated Operating Agreement of Advanced GI Endoscopy, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed and dated Medical Director Agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed and dated Administrative Services Agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of an executed and dated Application for Authority of Physicians Endoscopy, LLC, acceptable to the Department. [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]
6. 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]
7. The applicant shall complete construction by May 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

Island Digestive Health Center, LLC (IDHC) seeks to establish and construct a single-specialty freestanding ambulatory surgery center (ASC) specializing in gastroenterology procedures. The ASC will be located at 471 Montauk Highway, West Islip 11795, in Suffolk County.

### Analysis

Island Digestive Health Center (IDHC) states that procedures projected for the ASC are currently being performed in the applicant physicians' private, office-based practices and will not impact on those being done in a hospital setting.

Good Samaritan Hospital Medical Center, which is located less than one mile from the proposed Center, supports the project and has executed a Transfer Agreement to provide backup and emergency services for the Center. All of the physicians participating in the proposed ASC have admitting privileges and longstanding relationships with Good Samaritan Hospital Medical Center.

Currently, there are 9 Ambulatory Surgery Centers in Suffolk County. The type of ambulatory surgery service and the number of cases performed at the centers are listed in Table 1 below:

<u>ASC Type</u>	<u>Name</u>	<u>2010</u>	<u>2011</u>
Multi	Melville Surgery Center	5,357	5,185
Multi	North Shore Surgi-Center	8,085	8,102
Multi	Long Island Ambulatory Surgery Center	6,508	6,908
Multi	Suffolk Surgery Center, LLC	5,702	4,882
Gastroenterology	Digestive Health Center of Huntington, Inc	3,429	3,068
Multi Specialty	Progressive Surgery Center, LLC	1,273	1,313
Orthopedics	Long Island Hand and Orthopedic Surgery Center, LLC	800	657
Gastroenterology	Island Endoscopy Center, LLC		10,306
Multi	South Shore Surgery Center		1,601
	<i>Total</i>	<i>31,154</i>	<i>42,022</i>

Source: SPARCS, 2010 and 2011

The members of the proposed center are committed to serving all persons in need gastroenterological service without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics. The applicant understands that it must provide its fair share of charity care and proposes to do so. They will also develop a formal outreach and screening program directed at members of the local community.

### Recommendation

**From a need perspective contingent approval is recommended for a limited life of five years**

## Programmatic Analysis

### Project Proposal

Establish a diagnostic and treatment center that will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	<b>IDHC, LLC</b> <b>Upon approval name will become Island Digestive Health Center, LLC</b>
Site Address	471 Montauk Highway, West Islip
Surgical Specialties	Gastroenterology
Operating Rooms	0
Procedure Rooms	3
Hours of Operation	Monday through Friday from 7:00 am to 5:00 pm. (Extended as necessary to accommodate patient needs).
Staffing (1st & 3rd Year)	16 FTEs / 17 FTEs
Medical Director(s)	Babak Danesh
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Good Samaritan Hospital Medical Center < 1 mile and 1 minute 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:

Class A	
Advanced GI Endoscopy, LLC	85.00%
Kourosh Adhami, MD (28.24%)	
Babak Danesh, MD (5.88%)	
James Kohlroser, DO (25.88%)	
Neil Lobo, MD (28.24%)	
Krishnaiyer Subramani, MD (11.76%)	
Class B	
John Poisson	3.75%
Frank Principati	3.75%
Karen Sablyak	3.75%
W. Barry Tanner	3.75%

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

The Center plans to work with Good Samaritan Hospital Medical Center's patients to educate them regarding the availability of and services offered by local primary care physicians and the Hospital. The proposed members of the Center are committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay or other personal characteristics.

The Center is evaluating its options with respect to becoming a network provider in the provider-led health homes designated by the Department for Suffolk County and the surrounding counties as the implementation of health homes

progresses. The Center plans to implement an Electronic Medical Record system and will investigate the potential for affiliating with the Long Island Patient Information Exchange.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

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

**Financial Analysis**

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy, which is summarized below:

- Premises:* 6,750 square feet located at 471 Montauk Highway, West Islip, New York.
- Lessor:* Parkwood Commons, LLC
- Lessee:* IDHC, LLC
- Term:* 10 years with an option to renew of two (2) five (5) year options.
- Rental:* \$202,500 annually (\$30.00 per sq. ft.) with a 2% increase per year annum.
- Provisions:* The tenant will be responsible for maintenance and utilities.

The applicant has submitted an affidavit indicating that the lease arrangement will be an arms length lease arrangement. Also, the applicant submitted letters from licensed realtors attesting to the reasonableness of the square foot rental.

Development Services Agreement

The applicant has submitted an executed development services agreement, which is summarized below:

- Effective Date:* December 5, 2011
- Company:* IDHC, LLC
- Contractor:* Physicians Endoscopy, LLC
- Development Term:* The Development Term of this Agreement shall commence on the Effective Date and shall end on the date the first patient is treated at the Facility.
- Services Provided:* The Contractor shall provide the following services, under the direction of the established operator: coordination of legal information of operating entities including working with counsel to document, register and license such entities; assistance with site qualification and selection; assistance with any necessary lease negotiations; coordination of facility design; coordination of equipment purchasing; recruitment of initial support staff and administrator; development and recommendation of Facility policies, procedures, quality assurance, utilization review, and other governing and/or procedural documents required for Facility operation, state licensure, and Medicare/Medicaid certification, subject to approval by Company; preparation of Medicare and Medicaid application documents; develop staffing plan for the Facility, review and assist in the development of employee policies and procedures and prepare applications and other documentation necessary in order for Company to

negotiate and obtain payor contract and managed care contracts.

*Development Fee:* The Company shall pay the Contractor a development fee of \$100,000. In addition to the Development Fee, the Company shall reimburse the Contractor for the Contractor's out-of-pocket expenses.

#### Administrative Services Agreement

The applicant has submitted an executed administrative services agreement, which is summarized below:

*Company:* IDHC, LLC  
*Contractor:* Physicians Endoscopy, LLC  
*Term:* 12 years. On the expiration date, and on each sixth anniversary of the Expiration Date, the Administrative Term and Billing and Collection Term shall automatically renew for up to three (3) additional six (6) year term, unless either Party gives the other Party written notice of its intention not to renew at least sixty days (60) prior to the expiration of the then current Administrative Term and Billing and Collection Term.

*Services Provided:* Physicians Endoscopy, LLC shall provide the following services: institute cost containment policies and procedures regarding staffing, supplies and capital and other expenditures; subject to ultimate Company approval, assist with establishment of fee schedules and advise Company of managed care contracting opportunities; implement financial, accounting and management reporting systems approved by Company; develop and submit to the Board of Managers for approval in its sole discretion an annual budget which shall include operating projections, cash flow projections, capital spending projections; assist in the development and implementation of an organizational structure and written by laws, policies and procedures; assist in the development and recommendation of financial procedures and controls to achieve orderly operation of the Company; assist Company in complying with governmental regulations and shall provide to Company billing and collection services.

*Compensation:* The Company shall compensate the Contractor \$120,000 (the Administrative Fee). Each year after the initial year of the Administrative Term, the Administrative Fee shall be increased by two percent (2%). Also, the compensation for the billing and collection of services, the Company shall pay the Contractor an amount equal to Forty Two Dollars per procedure (the Billing and Collection Fee).  
The total fee projected during the first year is \$410,349.

The following members of the applicant also have ownership interests in Physicians Endoscopy, LLC: William Tanner (10%); John Poisson (4.80%); Karen Sablyak (4.8%) and Frank Principati (less than 1%).

#### Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$3,498,000, further itemized as follows:

Renovation and Demolition	\$1,805,050
Design Contingency	180,505
Construction Contingency	180,505
Architect/Engineering Fees	144,404
Other Fees (Consultant)	50,000
Moveable Equipment	1,042,845
Financing Costs	31,250
Interim Interest Expense	42,318
CON Fee	2,000
Additional Processing Fee	<u>19,123</u>
Total Project Cost	\$3,498,000

Project costs are based on a February 1, 2013 construction start date and a three month construction period.

The applicant's financing plan appears as follows:

Equity	\$373,000
Bank Loan (6.50% interest rate for a six year term)	3,125,000

#### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,573,037	\$4,864,137
Expenses:		
Operating	\$2,640,477	\$2,654,910
Capital	<u>1,261,239</u>	<u>1,270,854</u>
Total Expenses	\$3,901,716	\$3,925,764
Net Income	\$671,321	\$938,373
Utilization: (Procedures)	6,914	7,477
Cost Per Procedure	\$564.32	\$525.05

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	3.00%	2.00%
Medicaid Managed Care	4.00%	5.00%
Medicare Fee-for-Service	13.00%	11.00%
Medicare Managed Care	6.00%	8.00%
Commercial Fee-for-Service	22.00%	18.00%
Commercial Managed Care	50.00%	54.00%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the applicant's personal experience of the participating physicians, who are Board certified in gastroenterology.

#### Capability and Feasibility

The applicant will finance \$3,125,000 at an interest rate of 6.50% for a six year term. The remainder, \$373,000, will be provided as equity from the proposed members personal resources.

Working capital requirements are estimated at \$654,294, which appears reasonable based on two months of third year expenses. The applicant will finance \$325,035 at an interest rate of 5.5% for a five year term. The remainder, \$329,259, will be provided as equity to be derived from the personal resources of the proposed members. Presented as BFA Attachment A are the personal net worth statements of the proposed members of IDHC, LLC, which indicates the availability of sufficient funds for the equity contribution for the project cost and the working capital. In addition, John Poisson, Frank Principati, Karen Sablyak and Barry Tanner, who are members of PELL, have financial requirements for two other projects: CON#121140 (Endoscopy Center of Niagara, LLC) and CON# 111502 (Hudson Valley Center, LLC). Presented as BFA Attachment B is the chart showing the financial requirement for the PELL members for the subject application and the two other applications. As shown, the members have sufficient funds for



this project and the other two projects. Presented as BFA Attachment C, is the pro-form balance sheet, which indicates a positive net asset position of \$702,259 as of the first day of operation.

The submitted budget indicates a net income of \$671,321 and \$938,373 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 of Proposed Members
BFA Attachment B	The table showing equity requirements for Physicians Endoscopy, LLC that are also proposed members of IDHC, LLC for other applications
BFA Attachment C	Pro-forma Balance Sheet

## 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:** Nassau University Medical Center  
2201 Hempstead Turnpike  
East Meadow, New York 11554

No response.

**Facility:** Southside Hospital  
301 East Main Street  
Bay Shore, New York 11777

No response.

**Facility:** Good Samaritan Medical Center  
1000 Montauk Highway  
West Islip, New York 11795

No response.

## 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 five participating physicians. All of the projected 7,284 first-year procedures are currently being performed in the physicians' private, office-based practices, which are located in the same community that the applicant proposes to serve through this project. The applicant also cites the continuous growth of ambulatory surgery in Suffolk County, and in New York State, as a source of cases, and also describes the projected growth in the 45 years and older population as a source of demand for colonoscopies to be performed at the proposed ASC.

- 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.

- Office-Based Cases

As previously noted, the all of the projected procedures for the proposed ASC are currently being performed in the participating physicians' private, office-based practices. The applicant states that none of the projected procedures are from any hospital.

### 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 6th day of December, 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 gastroenterology to be located at 471 Montauk Highway, West Islip, 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:

121393 B

FACILITY/APPLICANT:

IDHC, LLC d/b/a Island Digestive Health  
Center

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, 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 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 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]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of a working capital loan commitment that is acceptable to the Department of Health. [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 executed and dated lease agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of IDHC, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and dated Operating Agreement of IDHC, LLC, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed and dated Certificate of Amendment of the Articles of Organization of Advanced GI Endoscopy, LLC, acceptable to the Department. [CSL]

13. Submission of a photocopy of an executed and dated Operating Agreement of Advanced GI Endoscopy, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of an executed and dated Medical Director Agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed and dated Administrative Services Agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of an executed and dated Application for Authority of Physicians Endoscopy, LLC, acceptable to the Department. [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]
6. 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]
7. The applicant shall complete construction by May 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237



# Public Health and Health Planning Council

Project # 121412-B  
**LIEAC, LLC**  
**d/b/a Long Island Digestive Endoscopy Center**

**County:** Suffolk (Setauket)      **Program:** Ambulatory Surgery Center  
**Purpose:** Establishment and Construction      **Submitted:** May 31, 2012

## Executive Summary

### Description

LIAEC, LLC d/b/a Long Island Digestive Endoscopy Center, a New York limited liability company, requests approval to establish and construct an Article 28 single-specialty freestanding ambulatory surgery center to perform gastroenterological procedures relating to endoscopy and colonoscopy services. The center will be located at 140 Belle Mead Road, Setauket, and will include four procedure rooms, and a Pre-Op and Recovery Room, accommodating the current and future needs of the community.

Long Island Digestive Endoscopy Center consists of 7 individual physicians (each board-certified in gastroenterology) and one individual non-physician member (Frontier Healthcare Associates, LLC), and is as follows:

Proposed Member	Interest
Dr. William J. Cohn	13.286%
Dr. Eugene A. Coman	13.286%
Dr. Robert J. Baranowski	13.286%
Dr. Gary R. Bernstein	13.286%
Dr. Howard A. Keschner	13.286%
Dr. Seth E. Persky	13.286%
Dr. Emily Glazer	13.286%
Frontier Healthcare Associates, LLC	6.998%

Dr. Oleg Gutnik and Jordan Fowler are members of Digestive Diseases Diagnostic & Treatment Center located at 214 Avenue P in Brooklyn, which began operation in 2010.

The proposed facility will enter into an Administrative Services Agreement, a Development Services Agreement and Billing Services Agreement with Frontier Healthcare Management Services, LLC to provide services including but not limited to budgeting, credentialing, billing, physician scheduling and physics. Mr. Fowler and

Dr. Gutnik are equal members of Frontier Healthcare Management Services, LLC.

No responses were received to the Department's inquiry to local hospitals regarding the impact of the proposed ASC in the service area.

Total project costs are estimated at \$3,870,514.

### 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

It is projected that there will be 6,723 procedures in the first year of facility operation and 9,510 procedures in the third year. The applicant reports that the proposed ASC is committed to serving all persons in need regardless of their ability to pay or the source of payment.

### 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 \$470,514 in cash and a \$3,400,000 bank loan.

Budget:	<i>Revenues:</i>	\$ 4,486,716
	<i>Expenses:</i>	<u>3,026,421</u>
	<i>Gain/(Loss):</i>	\$ 1,460,295

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 by the governing body 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. These reports shall include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payor source;
  - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided, and
  - Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of a loan commitment for project costs acceptable to the Department. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
7. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA, CSL]
8. Submission of an executed development services agreement acceptable to the Department. [BFA]
9. Submission of an executed billing services agreement acceptable to the Department. [BFA, CSL]
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 Amendment to the Amended and Restated Articles of Organization of Long Island Digestive Endoscopy Center, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of an Amendment to the Operating Agreement of Long Island Digestive Endoscopy Center, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of an Amendment to the Operating Agreement of Frontier Healthcare Associates, LLC, which is acceptable to the Department. [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]
6. 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]
7. 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

**December 6, 2012.**

## Need Analysis

### Background

LIAEC, LLC d/b/a Long Island Digestive Endoscopy Center (LIDEC) seeks approval to establish and construct an Article 28 diagnostic and treatment center (D&TC), to be certified as a single-specialty freestanding ambulatory surgery center (ASC) specializing in gastroenterology procedures. The center will be located at 140 Belle Mead Road, Setauket, 11733, in Suffolk County. Long Island Digestive Endoscopy Center (LIDEC) has seven physician members, each with a 13.286% membership interest, and one LLC member with a 6.998% membership interest.

The primary service area is Suffolk County, specifically zip code 11733.

The number of freestanding ambulatory surgery centers in Suffolk County is as follows:

2	- Single Specialty ASCs, gastrointestinal
1	- Single Specialty ASC, Orthopedics
6	- Multi Specialty ASCs

It is projected that the ASC will perform 6,723 procedures in the first year and 9,510 procedures in the third year.

John T. Mather Hospital, which is 3.7 miles from Long Island Digestive Endoscopy Center, is willing to enter into a transfer and affiliation agreement to provide backup and emergency services. All of the participating physicians have admitting privileges at J.T. Mather Hospital.

The applicant reports that the proposed ASC is committed to serving all persons in need regardless of their ability to pay or the source of payment. Additionally, two percent of the procedures will be for charity, reduced compensation, or uncompensated care.

The applicant has provided 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. This statement is acceptable to the Department.

### Conclusion

The proposed project will bring procedures that are currently being performed in private physician offices under a regulated Article 28 entity.

### 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 a single specialty ambulatory surgery center.

<b>Proposed Operator</b>	<b>LIAEC, LLC</b>
Doing Business As	Long Island Digestive Endoscopy Center
Site Address	140 Belle Mead Road, Setauket
Surgical Specialties	Gastroenterology
Operating Rooms	0
Procedure Rooms	4
Hours of Operation	Monday through Friday from 7:00 am to 5:00 pm. (Extended as necessary).



Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	11.2 FTEs / 12.8 FTEs
Medical Director(s)	Gary R. Bernstein
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by J.T. Mather Hospital 3.7 miles and 9 minutes away.
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

Character and Competence

The members of the LLC are:

<u>Name</u>	
William J. Cohn, MD	13.286%
Eugene A. Coman, MD	13.290%
Robert J. Baranowski, MD	13.286%
Gary R. Bernstein, MD	13.286%
Howard A. Keschner, MD	13.286%
Seth E. Perskey, MD	13.286%
Emily Glazer, MD	13.286%
Frontier Healthcare Associates, LLC	6.998%
Jordan Fowler (50%)	
Oleg Gutnik, MD (50%)	

The seven individual members are all practicing physicians. Frontier Healthcare Associates and/or its individual members are operators of several 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.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources

The Center intends to provide screening and other outreach programs to the community and plan to work with J.T. Mather's patients to educate them regarding the availability of, and services offered by, local primary care physicians and the Hospital. The Center is committed to serving all persons in need.

The Center is evaluating its options with respect to becoming a network provider in the provider-led health homes designated by the Department for Suffolk County and the surrounding counties as the implementation of health homes progresses. The Center will also consider joining any Accountable Care Organization (ACO) J.T. Mather joins and will continue to evaluate other ACOs and health homes as they are developed. The Center plans to implement an Electronic Medical Record system and will investigate the potential for affiliating with the Long Island Patient Information Exchange.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex,

sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. The Center intends to review the list acceptable procedures annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Recommendation

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

## Financial Analysis

### Administrative Services Agreement

Long Island Digestive Endoscopy Center will enter into an Administrative Services Agreement with Frontier Management Healthcare Services. The consultant will provide certain professional business and administrative services to the ambulatory surgery center relating to the operation of the facility.

The applicant submitted a draft administrative services agreement, which is summarized below:

*Facility:* Long Island Digestive Endoscopy Center  
*Contractor:* Frontier Management Healthcare Services, LLC  
*Administrative Term:* 1 Year, with option to renew each year.  
*Compensation:* \$150,000 per annum (\$12,500/month) for administrative services plus an additional 1.5% per year adjustment.

*Duties of the Contractor:* Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Operating Licenses, Utilities/Waste Management and Banking

While Frontier Management Healthcare Services, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

### Development Services Agreement

The applicant has submitted a draft Development Services Agreement whereby the seven individual physicians, who are proposed members, will enter into a Development Services Agreement with Frontier Management Healthcare Services. The consultant would provide certain professional business and administrative services to aid in the operational development of the facility. The physicians will be billed a flat fee of \$125,000 over an eighteen month period.

### Billing Services Agreement

The applicant has submitted a draft Billing Services Agreement, which is summarized below:

*Facility:* LIAEC, LLC  
*Contractor:* Frontier Healthcare Billing Services, LLC  
*Term:* Three years with a one year renewal  
*Compensation:* Billing and collection services are \$23 per claim.

### Lease Rental Agreement

The applicant has submitted a draft lease for approximately 10,000 square feet of space on the ground floor of 140 Belle Meade Road, Setauket, NY, summarized below:

*Lessor:* Laurel Ridge Realty  
*Lessee:* LIAEC, LLC  
*Term:* 15 Years

*Rental:* First year- \$330,000(\$33.00 per sq. ft.) with a 3% escalation each year after.  
*Provisions:* Utilities, Maintenance and Taxes.

The applicant has indicated that the lease will be an arm's length lease arrangement. Letters of opinion from licensed commercial real estate brokers have been submitted indicating rent reasonableness.

**Total Project Cost and Financing**

Total project costs for renovations and the acquisition of movable equipment is estimated at \$3,870,514, itemized as follows:

Renovation & Demolition	\$ 2,036,450
Design Contingency	203,645
Construction Contingency	203,645
Architect/Engineering Fees	162,916
Other Fees (Consulting)	50,000
Movable Equipment	929,955
Telecommunications	158,742
Financing Cost	34,000
Interim Interest Expense	68,000
Application Fee	2,000
Additional Processing Fee	<u>21,160</u>
Total Project Cost	<u>\$3,870,514</u>

Project costs are based on an April 1, 2013 construction start date and a six month construction period. The applicant's financing plan appears as follows:

Equity	\$ 470,514
Bank Loan @6.0% over five years	3,400,000

A letter of interest has been submitted by TD Bank.

**Operating Budget**

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$3,171,870	\$4,486,716
Expenses:		
Operating	\$2,218,684	\$2,205,890
Interest	216,850	129,451
Depreciation and Rent	<u>670,983</u>	<u>691,080</u>
Total Expenses	\$3,106,517	\$3,026,421
Net Income	<u>\$65,353</u>	<u>\$1,460,295</u>
Utilization: (procedures)	6,723	9,233
Cost Per Procedure	\$462.07	\$327.78

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

	<u>Years One and Three</u>
Commercial Insurance-Fee-For-Service	38.0%
Commercial Insurance-Managed Care	25.0%
Medicare Fee-For-Service	25.0%

Medicare Managed Care	5.0%
Medicaid Managed Care	5.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the combined historical experience of the proposed physician members of Long Island Digestive Endoscopy Center. The projected operating budget accounts for the growing impact of managed care. The applicant has submitted physician referral letters in support of utilization projections.

#### Capability and Feasibility

Project cost will be satisfied by a loan from TD Bank for \$3,400,000 at stated terms, with the remaining \$470,514 from proposed member's equity.

Working capital requirements, estimated at \$504,404, appear reasonable based on two months of third year expenses. The applicant will finance \$252,000 via a loan at an interest rate of 5.0% for a one year term, for which a letter of interest has been provided by TD Bank. The remainder, \$252,404 will be provided as equity by the proposed members.

Presented as BFA Attachment B is a summary of net worth statement of the proposed members of Long Island Digestive Endoscopy Center, which indicates the availability of sufficient funds for the stated levels of equity. An affidavit from each physician applicant member has been submitted stating that they are willing to contribute resources disproportionate to ownership percentages. Presented as BFA Attachment C is the pro-forma balance sheet of Long Island Digestive Endoscopy Center as of the first day of operation, which indicates positive member's equity position of \$722,918.

The submitted budget indicates a net income of \$65,343 and \$1,460,295 during the first and third years of operation, respectively. The budget appears reasonable.

BFA Attachments E is the financial summary of the Digestive Diseases Diagnostic & Treatment Center currently operated by proposed members of Frontier Healthcare Associates, LLC. As shown on BFA Attachment E, Digestive Diseases Diagnostic & Treatment Center has experienced positive working capital, net equity and a net profit from operations for 2011 of \$1,052,865 and \$1,103,999 as of July 31, 2012.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart of Long Island Digestive Endoscopy Center
BFA Attachment B	Summary Net Worth Statement of Proposed Members of Long Island Digestive Endoscopy Center
BFA Attachment C	Summary Net Worth of Frontier Healthcare Associates, LLC
BFA Attachment D	Pro-forma Balance Sheet
BFA Attachment E	Financial Summary, Digestive Diseases Diagnostic & Treatment Center
BFA Attachment F	List of Article 28 Freestanding Ambulatory Surgery Centers owned by proposed members, Frontier Healthcare Associates, 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:** University Hospital  
Health Sciences Center  
Stony Brook, New York 11794

No response.

**Facility:** John T. Mather Hospital  
75 North Country Road  
Port Jefferson, New York 11777

No response.

**Facility:** St. Charles Hospital  
200 Belle Terre Road  
Port Jefferson, New York 11777

No response.

### Supplemental Information from Applicant

- Need and Sources of Cases

The utilization projected in the application is based on the current caseload of the seven participating board-certified gastroenterologists, who have committed to utilize the proposed ASC to perform approximately 8,964 first-year procedures. The applicant also cites projected growth rates for Suffolk County for the population 45 years and over, the main source of gastroenterological cases. The applicant also documents a shortage of gastroenterologists in Suffolk County (one for every 15,263 persons over age 45). The applicant expects that the proposed ASC will attract and retain gastroenterologists in Suffolk County, which would be a potential source of additional cases.

- 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.

- Office-Based Cases

The applicant states that all of the projected procedures for the proposed ASC will come from the participating physicians' private, office-based practice. None of the projected procedures are performed in any hospital.

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 6th day of December, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a free standing single-specialty ambulatory surgery center specializing in gastroenterology procedures to be located at 140 Belle Mead Road, Setauket, 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:

121412 B

FACILITY/APPLICANT:

LIEAC, LLC d/b/a Long Island Digestive  
Endoscopy Center

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 by the governing body 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. These reports shall include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payor source;
  - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided, and
  - Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. Submission of an executed building lease that is acceptable to the Department. [BFA]
5. Submission of a loan commitment for project costs acceptable to the Department. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department. [BFA]
7. Submission of an executed administrative services agreement that is acceptable to the Department. [BFA, CSL]
8. Submission of an executed development services agreement acceptable to the Department. [BFA]
9. Submission of an executed billing services agreement acceptable to the Department. [BFA, CSL]
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 Amendment to the Amended and Restated Articles of Organization of Long Island Digestive Endoscopy Center, which is acceptable to the Department. [CSL]



12. Submission of a photocopy of an Amendment to the Operating Agreement of Long Island Digestive Endoscopy Center, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of an Amendment to the Operating Agreement of Frontier Healthcare Associates, LLC, which is acceptable to the Department. [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]
6. 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]
7. 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]

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 # 122071-B  
**21 Reade Place ASC, LLC**

**County:** Dutchess (Poughkeepsie)  
**Purpose:** Establishment and Construction

**Program:** Ambulatory Surgery Center  
**Submitted:** August 8, 2012

## Executive Summary

### Description

45 Reade Place, LLC, a limited liability company to be renamed 21 Reade Place ASC, LLC, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC), certified as a single-specialty freestanding ambulatory surgery center (ASC) to perform gastroenterological procedures relating to endoscopy and colonoscopy services. The center will be located on the third floor in 5,918 square feet of leased space of Vassar Brothers Medical Center's (VBMC) four-story building, located at 21 Reade Place, Poughkeepsie. The ASC will contain two procedure rooms, preoperative and recovery areas and appropriate support functions.

Once the center is operational, the physicians will no longer perform endoscopic procedures in their offices, thus allowing the operator to provide screening and other outreach programs to the community.

The proposed members of 21 Reade Place ASC, LLC are VBMC, a 365-bed not-for-profit hospital whose active parent is Health Quest Systems, Inc. (51%), and a New York limited liability company, KVBDA, LLC, made up of five individual physicians each with 20% membership (49%). The physician members are Sunil Khurana, M.D., Robert Dean, M.D., Salvatore Buffa, M.D., Peter Varunok, M.D. and Khurram I. Ashraf, D.O.

DOH Recommendation  
Contingent approval.

### Need Summary

The physician members of 21 Reade Place ASC will perform 5,500 projected first-year procedures at the proposed ambulatory surgery center. These procedures are currently being done at their private,

office-based practice in Poughkeepsie or in Vassar Brothers Medical Center's Ambulatory Surgery facilities. The number of projected visits in the third year is 6,500. 21 Reade Place ASC will serve communities in Dutchess and Ulster Counties.

### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

### Financial Summary

There are no project costs associated with this application.

Budget:	<i>Revenues:</i>	\$ 4,875,000
	<i>Expenses:</i>	<u>1,954,684</u>
	<i>Gain/(Loss):</i>	\$ 2,920,316

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 and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an acceptable DBA, if applicable. [HSP]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. Submission of an executed Certificate of Amendment of the Articles of Organization of 21 Reade Place ASC, LLC, that is acceptable to the Department. [CSL]
6. Submission of an executed Operating Agreement of 21 Reade Place ASC, LLC that is acceptable to the Department. [CSL]
7. Submission of an executed lease that is acceptable to the Department. [CSL]
8. Submission of the Certificate of Incorporation of Vassar Brothers Hospital d/b/a Vassar Brothers Medical Center. [CSL]
9. Submission of the bylaws of Vassar Brothers Hospital d/b/a Vassar Brothers Medical Center. [CSL]
10. Submission of executed Articles of Organization of KVBDA, LLC that acceptable to the Department. [CSL]
11. Submission of an executed Operating Agreement of KVBDA, LLC that is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of 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 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

21 Reade Place ASC, LLC is seeking approval to establish and construct a free-standing diagnostic and treatment center (D & TC) specializing in endoscopic gastroenterology procedures, to be located on the campus of Vassar Brothers Medical Center (VBMC) at 21 Reade Place, Poughkeepsie, 12601, in Dutchess County.

21 Reade Place ASC will serve communities in the southern half of Dutchess County and adjoining zip codes in Ulster County. Dutchess County has two single specialty (ophthalmology and endoscopy) and two multi-specialty freestanding ASCs. The type of ambulatory surgery services and number of cases performed at the centers are listed below:

<b><u>Existing Free-Standing Ambulatory Surgery Centers: Dutchess County</u></b>			
<u>Type</u>	<u>Name</u>	<u>2010</u>	<u>2011</u>
Ophthalmology	Central NY Eye Center	1,397	1,530
Multi Specialty	Dutchess ASC	3,843	3,893
Multi Specialty	HV Center at St. Francis, LLC	3,118	2,500
Endoscopy	HV Endoscopic Center	5,620	5,724
Total		13,978	13,647

*Source: SPARCS 2010 – 2011.*

The proposed location is in a Health Professional Shortage Area for Dental Care for Medicaid and is in a Medically Underserved Area/Population (MUA/P) for Low Income (HRSA).

Vassar Brothers Medical Center will provide backup and emergency services for 21 Reade Place ASC following the opening of the facility.

21 Reade Place ASC will serve all persons without regard to their ability to pay or the source of payment.

21 Reade Place ASC has provided 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. This statement is acceptable to the Department.

As a regulated Article 28 entity, 21 Reade Place ASC will provide gastroenterology ambulatory surgery procedures that are currently being performed in a private office setting. Its location, which is on the campus of Vassar Brother Medical Center, will also enhance access to these procedures. There are currently no single specialty gastroenterology ambulatory surgery centers in Dutchess 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.

<b>Proposed Operator</b>	<b>21 Reade Place ASC, LLC</b>
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Site Address	21 Reade Place, Poughkeepsie
Surgical Specialties	Gastroenterology
Operating Rooms	0
Procedure Rooms	2
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	11.6 FTEs / 11.6 FTEs
Medical Director(s)	Sunil Khurana
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Vassar Brothers Medical Center, located on the same campus.
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:

<u>Name</u>	
Vassar Brothers Medical Center	51.00%
KVBDA, LLC	49.00%
<ul style="list-style-type: none"> <li>- Sunil Khurana, MD (20%)</li> <li>- Robert Dean, MD (20%)</li> <li>- Salvatore Buffa, MD (20%)</li> <li>- Peter Varunok, MD (20%)</li> <li>- Khurram Ashraf, DO (20%)</li> </ul>	

All five members of KVBDA, LLC are practicing physicians. Health Quest Systems, Inc. is Vassar Brothers sole and active member and as such was subject their board members were also subject to 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.

Dr. Weinreich disclosed one settled malpractice case. Dr. Martinko disclosed one settled and two pending malpractice cases. Dr. Varunok disclosed one pending malpractice case.

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.

Planned Parenthood of Mid-Hudson Valley disclosed a 2007 settlement with the NYS Attorney General's Medicaid Fraud Control Unit. Northern Dutchess Hospital was fined \$14,000 in 2007 Based on the investigation of the occurrence of wrong-sided lipoma removal resulting from failure to mark surgical site and failure to review CT scan.

**Integration with Community Resources**

The Center commits to becoming a network provider in the provider-led health homes designated by the Department for Dutchess County and the surrounding counties as the Department phases in the implementation of health homes. Additionally, the center will consider joining any Accountable Care Organizations that Vassar Brothers joins. The center will implement an electronic medical record system and will investigate affiliating with the Taconic Health Information Network and Community, an established RHIO.

**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 of 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.**

<b>Financial Analysis</b>
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Lease Rental Agreement

The applicant will lease approximately 5,918 square feet of space on the third floor of a four-story building known as Suite 3300 and owned by VBMC located at 21 Reade Place, Poughkeepsie, NY under the terms of the proposed lease agreement summarized below:

*Date:* July 18, 2012  
*Lessor:* Vassar Brothers Medical Center  
*Lessee:* 21 Reade Place ASC , LLC  
*Term:* 10 Years with option to renew two additional five year terms  
*Rental:* \$218,966(\$37.00 per sq. ft.) per annum with a 3% increase per year thereafter.  
*Provisions:* Maintenance, utilities, insurance and taxes

The applicant has indicated that the lease will be a non-arm's length lease arrangement, and has submitted letters from real estate brokers attesting to the reasonableness of the per square foot rental.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$4,125,000	\$4,875,000
Expenses:		
Operating	\$1,589,815	\$1,735,718
Depreciation and Rent	218,966	218,966
Total Expenses	\$1,808,781	\$1,954,684
 Net Income	 \$2,316,219	 \$2,920,316
 Utilization: (procedures)	 5,500	 6,500
Cost Per Procedure	\$328.86	\$300.72

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

	<u>Years One and Three</u>
Commercial Insurance-Managed Care	54.2%
Medicare Fee-for-Service	33.0%
Medicare Managed Care	5.0%
Medicaid Fee-for-Service	1.0%
Medicaid Managed Care	3.8%
Self Pay	1.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the combined historical experience of the hospital and proposed physician members of KVBDA, LLC.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$325,781, appear reasonable based on two months of third year expenses which will be provided as equity by the proposed members. Presented as BFA Attachment A is a summary of net worth statement of the proposed physician members and BFA Attachment B is the financial summary for VBMC, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment C, is the pro-forma balance sheet of 21 Reade Place ASC, LLC as of the first day of operation, which indicates a positive net asset position of \$325,781.

Presented as BFA Attachment C is the 2010 and 2011 certified financial statements for Vassar Brothers Medical center which show positive working capital, net assets and net operating income of \$8,716,000 and \$7,688,000, respectively. Presented as BFA Attachment C, is the August 31, 2012 internal statements for Vassar Brothers Medical Center, which shows positive working capital, net assets, and a net operating income of \$1,491,000.

The submitted budget indicates a net income of \$2,316,219 and \$2,920,316 during the first and third years of operation, respectively. The budget appears reasonable.

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	Summary Net Worth Statement of Proposed Members of KVBDA, LLC
BFA Attachment B	Financial Summary of Vassar Brothers Medical Center, 2010-2011
BFA Attachment C	Financial Summary of Vassar Brothers Medical Center, as August 31, 2012 internals
BFA Attachment D	Pro-forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of December, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct an Article 28 diagnostic and treatment center certified as a single-specialty freestanding ambulatory surgery center to perform gastroenterological procedures relating to endoscopy and colonoscopy to be located on the third floor in lease space of Vassar Brothers Medical Center's four story building, located at 21 Reade Place, Poughkeepsie, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

122071 B

21 Reade Place, ASC, LLC



APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an acceptable DBA, if applicable. [HSP]
3. Submission of an executed building lease that is acceptable to the Department. [BFA]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
5. Submission of an executed Certificate of Amendment of the Articles of Organization of 21 Reade Place ASC, LLC, that is acceptable to the Department. [CSL]
6. Submission of an executed Operating Agreement of 21 Reade Place ASC, LLC that is acceptable to the Department. [CSL]
7. Submission of an executed lease that is acceptable to the Department. [CSL]
8. Submission of the Certificate of Incorporation of Vassar Brothers Hospital d/b/a Vassar Brothers Medical Center. [CSL]
9. Submission of the bylaws of Vassar Brothers Hospital d/b/a Vassar Brothers Medical Center. [CSL]
10. Submission of executed Articles of Organization of KVBDA, LLC that acceptable to the Department. [CSL]
11. Submission of an executed Operating Agreement of KVBDA, LLC that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of 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 1, 2013 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237





# Public Health and Health Planning Council

Project # 122069-E

## New Alternatives for Children, Inc.

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

**Program:** Diagnostic and Treatment Center  
**Submitted:** August 8, 2012

### Executive Summary

#### Description

New Alternatives for Children, Inc. (NAC), an existing not-for-profit Article 28 safety net diagnostic and treatment center (D&TC) located at 37 West 26<sup>th</sup> Street, Manhattan, requests approval for indefinite life. Via CON #032452-B, NAC received contingent-approval from the Public Health Council on January 21, 2005 for a five-year limited life effective on November 8, 2005. The D&TC began operations on August 9, 2007.

New Alternative for Children, Inc.'s D&TC provides Primary Medical Care, Pediatric, Well Child Care, Psychology, Nursing, Nutritional, Health Education and Medical Social Services primarily to medically fragile children (and their families), who are chronically ill and/or severely disabled.

The parent organization, by the same name, was founded in 1982, as a not-for-profit child welfare agency, licensed by the New York State Office of Children and Family Services (OCFS). The agency's mission is to provide innovative, high quality services in support of biological, foster and adoptive families caring for children with special medical needs. The applicant indicates that most of the children served are "medically fragile" chronically ill and/or seriously disabled, and the overwhelming majority are living below the federal poverty level. More than 50% of NAC children have multiple medical diagnoses. Additionally, in approximately 75% of NAC families, there are mental health needs in addition to special medical needs.

DOH Recommendation  
Contingent approval.

#### Need Summary

New Alternatives for Children's limited life operating certificate was issued for the period August 9, 2007 to August 9, 2012. At the time, NAC overestimated and projected there would be 3,468 visits in the first year of operation. This total projection included medical and mental health visits, while the reported visits are medical only. In addition, NAC encountered start-up problems. A total of 797 medical visits were provided in the first year of operation, but medical visits have increased to 1,552 for the current operating year.

Following approval of this CON, visits are projected to increase to 1,736 in the first year and 2,065 in the third year. NAC satisfied the reporting contingency of CON #03245-B in the second year of operation.

#### Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

#### Financial Summary

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 evidence of site control, acceptable to the Department of Health. [CSL]
2. Submission of an executed copy of New Alternatives for Children, Inc.'s Certificate of Incorporation and any amendments thereto, acceptable to the Department. [CSL]
3. Submission of a photocopy of the bylaws of New Alternatives for Children, Inc., which is acceptable to the Department. [CSL]
4. Submission of any agreements, including any subcontracts or assignment, that New Alternatives for Children, Inc. has entered into involving the management, administrative and/or consulting activities or services, including but not limited to, operational policies and procedures, acceptable to the Department. [CSL]

Council Action Date

**December 6, 2012.**

# Need Analysis

## Background

New Alternatives for Children, Inc. (NAC), an existing Article 28 Diagnostic and Treatment Center is requesting approval for certification for indefinite life. The previously was previously approved for a five-year limited life through CON # 032452-B. New Alternatives for Children, Inc. is located at 37 West 26<sup>th</sup> Street, New York, 10010, in New York County.

New Alternatives for Children provided services to patients from all five boroughs in New York City as well as Westchester and Long Island. From 2007 to 2011, 41% were from patients residing in Bronx County, 22% were from New York County, 20% were from Kings County, 13 percent were from Queens County and the remaining four (4) percent from Richmond, Long Island, Westchester, and other areas.

The initial projections provided by New Alternatives were overestimated and combined medical and mental health visits. New Alternatives also experienced start-up problems in their first year, causing the actual number of visits to be less than projected.

However, the number of visits increased significantly from the first year of operation to the fourth:

2007-08:	797
2008-09:	1,063
2009-10:	1,443
2010-11:	1,426
2011-12:	1,552 (Projected)

The number of visits based on the payor mix is as follows:

<i>Payor</i>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Medicaid-FFS	71%	70%	63%	54%
Medicaid-M/C	--	--	12%	25%
No Insurance	29%	30%	26%	21%
Total Visits	797	1,063	1,443	1,426

New Alternatives has implemented asthma management and Comprehensive Health Assessment programs for its patients. The applicant has also taken steps to participate in the new Health Homes (HH) service model; the goal of which is to facilitate Medicaid recipients' access to an interdisciplinary range of medical and behavioral health care as well as other service supports.

New Alternatives satisfied the contingency that was applied to the limited life approval of submitting annual reports beginning in the second year of the operation.

## Conclusion

The proposed project will continue providing health care services to children living in the communities in New York City and surrounding areas. Initial visits were less than projected due to a number of factors, including problems in start-up of the facility, an overestimation of visits, and combining medical and mental health visits while reporting medical visits only. New Alternatives has doubled the number of visits provided to children since its first year of operation and will continue to increase visits following certification for indefinite life.

## Recommendation

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

## Programmatic Analysis

### Background

New Alternatives for Children, Inc is requesting permission to convert their limited life approval to indefinite life.

### Character and Competence

The board of New Alternatives is comprised of thirty-three community members. 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

### 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:

	<u>Current Year- Ending 6/30/11</u>	<u>Year One</u>	<u>Year Three</u>
Revenue:	\$140,832	\$175,501	\$208,769
Expenses:			
Operating	472,403	761,018	761,806
Capital	22,030	22,030	22,030
Total Expenses	<u>\$494,433</u>	<u>\$783,048</u>	<u>\$783,836</u>
Net Income	<u>(\$353,601)</u>	<u>(\$607,547)</u>	<u>(\$575,067)</u>
Utilization (visits)	1,426	1,736	2,065
Cost per visit	\$346.72	\$451.06	\$379.58

The applicant indicates that year one expense and per visit increase is a temporary aberration due to increased staffing, which has already occurred, but occurred after current year (ending June 30, 2011), due to the increasing utilization.

For comparison, below, are the projected year one and three utilizations from the original limited life application # 032452, along with actual results.

<u>Utilization (visits)</u>	<u>Year One (2007)</u>	<u>Year Three (2009)</u>
Projected	3,468	7,450
Actual	797	1,443

After experiencing some early difficulties upon commencing operations, the applicant did not meet year one or year three projections for CON 032452. The applicant indicates the following: The above data only includes Article 28 visits. A fundamental aspect of NAC's application is to provide more coordinated services for its patients, many of whom have co-occurring medical and mental health conditions. As such, the applicant has both a D&TC and an Article 31 mental health clinic. The Article 31 clinic provided 2,150 visits in 2010 and 3,196 visits in 2011.

Additionally, Medicaid is the payer for essentially all of the D&TC visits. The center continues to provide a significant portion of visits each year (37% since commencing operations) to patients for whom the applicant cannot bill Medicaid, to a large extent because of the applicant's not being credentialed with the patient's Managed Medicaid Care Plan (MMC), at the time of visit. The applicant indicates that they rectified this situation and are presently credentialed with nearly all the MMC plans in New York City. However, going forward, private pay / charity care will remain significant for year one and three (although lower), as often the parents and foster care children treated are not properly credentialed with the appropriate Medicaid plan. The applicant does not refuse patient treatment due to lack of ability to pay.

Utilization by payor source during the first and third years is itemized as follows:

	<u>Current Year</u>	<u>Years One and Three</u>
Medicaid Fee-for-Service	54%	51%
Medicaid Managed Care	25%	33%
Private Pay/Charity	21%	16%

Expense and utilization assumptions are based on the experience of the center.

Below, as a comparison, is the projected year one and three utilization by payor source from the original limited life CON # 032452-B.

	<u>Years One and Three</u>
Medicaid FFS	90%
Medicaid M C	5%
Commercial FFS	3%
Commercial M C	2%

#### 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 net losses of \$607,547 and \$575,067 for year one and three. Considering the extensive unfunded charity care provided, the budget appears reasonable. The applicant indicates they are virtually exclusively Medicaid funded, along with substantial charity care. The applicant also indicates that they are mission driven, and plan to fund Article 28 deficits through the parent's financial resources.

Presented as BFA Attachment A is the financial summary of New Alternatives for Children, Inc. 2009/2010 and 2010/2011 certified financial statements. NAC had an average positive net asset position of \$1,602,548 during the period shown. The applicant had operating excess of revenues over expenses of \$17,961 during 2010 and (\$407,576) during 2011, respectively. The applicant indicates that during 2011, the Temporary Assistance for Needy Families (TANF) funding from NYS Office of Children and Families expired. Despite the funding loss, the applicant has continued to operate these unfunded programs, and has continued to seek alternative funding. Additionally, NAC's Article 28 and Article 31 clinics had fewer visits than projected. The applicant continues to take steps to improve operations and increase utilization. Visits for the D&TC increased 16% in F.Y. 2012 from the previous year to 1,590 visits. The facility had 994 visits from January-July 2012, a 23% increase from previous period in 2011, and is on track to have 1,704 visits during 2012 calendar year.

Presented as BFA Attachment B is the July 1, 2011 through June 30, 2012 un-audited financial summary, which indicate positive working capital and net assets and an excess of revenues over expense of \$1,032,959 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.**

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## Attachments

- |                  |   |
|------------------|---|
| BFA Attachment A | Financial Summary (Certified) – Alternatives for Children, Inc. 2009/2010 and 2010/2011               |
| BFA Attachment B | Financial Summary (un-audited) – Alternatives for Children, Inc. – July 1, 2011 through June 30, 2012 |
| 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 6th day of December, 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 a diagnostic and treatment center, previously approved for a limited life through CON #032452, for indefinite life, 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:

122069 E

FACILITY/APPLICANT:

New Alternatives for Children, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of evidence of site control, acceptable to the Department of Health. [CSL]
2. Submission of an executed copy of New Alternatives for Children, Inc.'s Certificate of Incorporation and any amendments thereto, acceptable to the Department. [CSL]
3. Submission of a photocopy of the bylaws of New Alternatives for Children, Inc., which is acceptable to the Department. [CSL]
4. Submission of any agreements, including any subcontracts or assignment, that New Alternatives for Children, Inc. has entered into involving the management, administrative and/or consulting activities or services, including but not limited to, operational policies and procedures, 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 # 122046-E Hamilton Park Nursing and Rehabilitation Center

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

**Program:** Residential Health Care Facility  
**Submitted:** July 27, 2012

### Executive Summary

#### Description

Hamilton Park Multicare, LLC, d/b/a Hamilton Park Nursing and Rehabilitation Center, a 150-bed residential health care facility (RHCF) and proprietary limited liability corporation located at 691 92<sup>nd</sup> Street, Brooklyn, requests approval to transfer 40% ownership interest to new member Marvin Rubin, and 20% interest to current member Solomon Rubin. The member's ownership interest of the operation before and after the transaction is as follows:

	<u>Current</u>	<u>Proposed</u>
Chaim Sieger	60%	0%
Moishe Heller	20%	20%
Solomon Rubin	20%	40%
Marvin Rubin	0%	40%

The proposed new member, Marvin Rubin, also has ownership interests in Hopkins Center for Rehabilitation (Brooklyn) and Linden Center for Nursing Rehabilitation (Brooklyn), contingently-approved under CON #112031.

Hamilton Park Nursing and Rehabilitation Center has satisfied all contingencies to add 50 beds with renovations to the third floor of the facility, which was approved under CON #102316-C on June 16, 2011 by the Public Health and Health Planning Council. Construction has not yet begun on CON #102316-C.

**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.

#### Financial Summary

There are no project costs, nor changes in operations or patient care associated with this application. The purchase price of \$150,000 will be financed proportionately based on ownership percentage through proposed members' equity.

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. Clarification regarding membership interest. [CSL]
2. Submission of an Amended and Restated Operating Agreement that is acceptable to the Department.  
[CSL]

Council Action Date

**December 6, 2012.**

# Programmatic Analysis

## Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Hamilton Park Nursing and Rehabilitation Center	Same
<i>Address</i>	691 92nd Street Brooklyn, NY. 11228	Same
<i>RHCF Capacity</i>	150	Same
<i>ADHC Program Capacity</i>	N/A	N/A
<i>Type Of Operator</i>	LLC	LLC
<i>Class Of Operator</i>	Proprietary	Proprietary
<i>Operator</i>	Hamilton Park Multicare, LLC  <u>Members:</u> Chaim Sieger .....60% Solomon Rubin .....20% Moishe Heller.....20%	Same  <u>Current Members:</u> Solomon Rubin .....40% Moishe Heller.....20%  <u>New Member</u> Marvin Rubin.....40%

## Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

Hopkins Center for Rehabilitation and Healthcare 3/2012 to present

Licensed Home Care Services Agencies

True Care, Inc. 3/2011 to present

- INDIVIDUAL BACKGROUND REVIEW:

**Marvin Rubin** has management experience with the Hamilton Park Nursing and Rehabilitation Center (SNF) in Brooklyn, New York and has accounting experience from Norwood Terrace (SNF) and Queens Nassau Nursing Home (SNF). He has disclosed ownership interest in the following residential health care facility:

Hopkins Center for Rehabilitation and Healthcare 3/2012 to present

Mr. Rubin also discloses ownership interest in the following licensed home care services agency:

True Care, Inc. 3/2011 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 operations for **Hopkins Center for Rehabilitation and Nursing** for the periods identified above, results in a conclusion of a substantially consistent high level of care since there were no enforcements.

A review of operations for **True Care, Inc.** for the periods 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, approval is recommended.**

## Financial Analysis

### Membership Interest Purchase Agreement

The applicant has submitted an executed membership interest purchase agreement, the terms of which are summarized below:

<i>Date:</i>	January 1, 2012
<i>Seller:</i>	Chaim Seiger
<i>Buyers:</i>	Solomon Rubin and Marvin Rubin
<i>Purpose:</i>	Sell 60% membership interest in Hamilton Park Multicare, LLC.
<i>Purchase Price:</i>	\$150,000 payable in full at closing (S. Rubin - \$50,000, M. Rubin-\$100,000)

### Operating Budget

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 revenues or expenses associated with this application.

The purchase price of \$150,000 will be met proportionately based on the ownership percentage through proposed member's equity. Presented as BFA Attachment A is the net worth statements of the proposed members showing sufficient funds.

Review of BFA Attachment B, financial summary of Hamilton Park Nursing and Rehabilitation Center, indicates that the facility has experienced average negative working capital, maintained average positive equity and generated an average net income of \$585,826 for 2010 and 2011. The applicant has stated that the negative working capital was due to the facility not receiving the correct Medicaid rate because of a change in operator from not-for-profit to proprietary. The facility also underwent renovations to patient rooms, dining room, lounge areas, hallways and nurse's station on 4<sup>th</sup> floor under a limited review. The situation has been corrected and the facility is now receiving the correct Medicaid rate. As of September 30, 2012, the facility maintained positive working capital, positive equity and generated a net income of \$2,009,198.

Review of BFA Attachment C, financial summary of Hopkins Center for Rehabilitation, indicates that the facility has experienced negative working capital, and maintained positive equity and net income of \$725,566 for 2011. The applicant has stated that the negative working capital was due to minor renovations made to the facility. As of June 30, 2012, the facility maintained positive working capital, positive equity, and generated a net income of \$3,296,169.

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	Net Worth Statement
BFA Attachment B	Financial Summary, Hamilton Park Nursing and Rehabilitation Center
BFA Attachment C	Financial Summary, Hopkins Center for Rehabilitation

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 6th day of December, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 40 percent ownership interest to new member Marvin Rubin and 20 percent interest to existing member Solomon Rubin, 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:

122046 E

FACILITY/APPLICANT:

Hamilton Park Nursing and Rehabilitation  
Center



APPROVAL CONTINGENT UPON:

1. Clarification regarding membership interest. [CSL]
2. Submission of an Amended and Restated Operating Agreement that is 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 # 121120-E  
**Premier Home Health Care Services, Inc.**

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

**Program:** Certified Home Health Agency  
**Submitted:** March 7, 2012

## Executive Summary

### Description

Premier Home Health Care Services, Inc. (Premier), an existing Article 36 proprietary corporation, seeks approval to purchase and become the operator of Gentiva Health Services (Gentiva), a certified home health agency (CHHA) located at 50 Court Street, Brooklyn, servicing Kings, New York and Queens Counties. Premier will continue to provide all existing CHHA services including home health aide, medical social services, medical supplies equipment and appliances, nursing, occupational therapy, physical therapy, and speech language pathology.

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

**DOH Recommendation**  
Contingent approval.

**Need Summary**  
As this project involves only a change in 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 principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

**Financial Summary**  
The total purchase price of \$1,250,000 will be met with equity from the applicant.

Budget:	<i>Revenues:</i>	\$ 3,491,458
	<i>Expenses:</i>	<u>3,445,384</u>
	<i>Gain/(Loss):</i>	\$ 46,074

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of an Amendment to the Bylaws of Premier Home Health Care Services, Inc., which is acceptable to the Department. [CSL]

Council Action Date

**December 6, 2012.**

## Programmatic Analysis

### Background

Premier Home Health Care Services, Inc. a proprietary corporation, seeks to acquire through an Asset Purchase Agreement selected assets and liabilities of New York Health Care, Inc. d/b/a Gentiva Health Services, a certified home health agency (CHHA). Upon approval, Premier Home Health Care Services, Inc. will operate the certified home health agency in the currently approved counties of Kings, Queens and New York and will operate under the name Premier Home Health Care Services, Inc.

Premier intends to offer the following home health care services: home health aide, medical social services, medical supply, equipment and appliances, nursing, occupational therapy, physical therapy and speech language pathology. The members of the Board of Directors of Premier Home Health Care Services, Inc. consist of the following individuals:

**Arthur Schwabe**, President  
CEO, Premier Home Health Care Services, Inc.

**Paul Schwabe**, Vice President, Secretary  
and Treasurer  
President/CEO, Premier Staffing

Affiliations for both Arthur Schwabe and Paul Schwabe are listed below:

Premier Home Health Care Services, Inc.  
Priority Home Care, Inc.  
Barele, Inc. d/b/a Omega Home Health Services  
At Home, Ltd.  
Premier Home Health Care of Massachusetts, Inc.  
Premier Home Health Care of Ohio  
Maranatha Home Care, Inc. d/b/a A Better Health Care (FL)  
Premier Home Health Care Services, Inc. d/b/a Metropolitan Home Health Care of New Jersey  
Premier Home Health Care Services, Inc. d/b/a Premier Home Health Care of Connecticut  
Premier Home Health Care Services, Inc. (NC)  
Premier Home Health Care Services, Inc. (IL)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General Exclusion List.

A review of the operations of the following agencies was performed as part of this review for the time periods indicated:

Premier Home Health Care Services, Inc. (1992 – present)  
Priority Home Care, Inc. (2003 – present)  
Barele, Inc. d/b/a Omega Home Health Services (2007 – present)  
At Home, Ltd. (2007 – present)  
Premier Home Health Care of Massachusetts, Inc. (2003 – present)  
Premier Home Health Care Services, Inc. d/b/a Metropolitan Home Health Care of New Jersey (2001 – present)  
Premier Home Health Care Services, Inc. (IL) (2011 – present)

The information provided by the New York State Department of Health Division of Home and Community Based Services has indicated that the home care agencies 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 Massachusetts Division of Occupational Safety has indicated that the home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the New Jersey Office of the Attorney General Division of Consumer Affairs has indicated that the home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Illinois Department of Public Health has indicated that the home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

After multiple attempts, the applicant was unable to obtain the enforcement histories from the following states: Florida, Connecticut and North Carolina. Please note that the state of Ohio does not license homecare agencies. Thus, no enforcement history was obtained from Ohio.

Recommendation

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

## Financial Analysis

### Sublease Agreement

The applicant has submitted an executed sublease rental agreement, the terms of which are summarized below:

<i>Date:</i>	March 29, 2012
<i>Premises:</i>	3,200 sq. ft. in Suite 1104 located in the office building at 50 Court St., Brooklyn.
<i>Landord:</i>	Joseph P. Day Realty Corp.
<i>Sublessor:</i>	Premier Home Health Care Service, Inc.
<i>Sublessee:</i>	New York Health Care Services, Inc. d/b/a Gentiva Health Services
<i>Lease Term</i>	7 years with the option to renew for an additional five years
<i>Sublessee Term:</i>	One year
<i>Rental:</i>	\$124,058/ year
<i>Provisions:</i>	The sublessee shall be responsible for insurance

Gentiva and Premier both rent space in the office building located at 50 Court Street, Brooklyn. During discussions for a change in operator, Gentiva's lease ran out so Premier is subleasing them space until approval of this application. None of the parties are related. Therefore the sublease agreement is an arm's length lease agreement.

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

<i>Date:</i>	November 18, 2011
<i>Seller:</i>	New York Health Care Services, Inc. d/b/a Gentiva Health Services, Inc.
<i>Buyer:</i>	Premier Home Health Care Service, Inc.
<i>Assets</i>	
<i>Transferred:</i>	All assets, properties, contractual rights, goodwill, going concern value, rights and claims of Seller which are owned and used by Seller exclusively in connection with the operation of the business.
<i>Assets Excluded:</i>	Cash, cash equivalents and accounts receivable, prepaid rent, licenses or permits; any rights or license to utilize the trade names or service marks identified by Seller in the operation of the business; personal property, all rights in connection with and the assets of any employee benefit plans of Seller, including profit sharing plans, pro-rated sick leave, vacation leave and pension plans; membership interests, shares of capital or other stock, other equity interests of Seller.

<i>Assumed</i>	
<i>Liabilities:</i>	Ongoing operational liabilities and obligations of Seller.
<i>Excluded</i>	
<i>Liabilities:</i>	Obligations or liabilities relating to the conduct of the Business which accrued, or arise from events which occurred, on or prior to the effective date.
<i>Purchase Price:</i>	\$1,250,000
<i>Payment:</i>	To be paid in full at closing

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

#### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Commercial	\$50,750	\$53,650
Medicare	1,020,000	1,240,320
Medicaid	1,995,077	2,194,175
Private Pay	<u>3,188</u>	<u>3,313</u>
Total Revenues:	\$3,069,015	3,491,458
Expenses:	\$3,132,175	\$3,445,384
Net Income (Loss):	\$(63,160)	\$46,074

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

	<u>Year One and Three</u>
Commercial Fee-for-Service	7%
Medicare Fee-for-Service	78%
Medicaid Managed Care	10%
Private Pay	1%
Charity Care	4%

Expenses and utilization assumptions are based on the historical experience of Premier Home Health Care Services, Inc. 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 \$522,029 based on two months of first year expenses and will be provided through existing operations of the applicant. Presented as BFA Attachment A is the financial summary of Premier Home Health Care Services, Inc., which indicates the availability of sufficient funds.

The submitted budget indicates a net loss of \$63,160 and a net income of \$46,074 for the first and third years of operations, respectively, subsequent to the change in operator. Revenues are based on current payment rates for certified home health agencies and the Medicaid episodic payment rates. The budget appears reasonable.

As shown on BFA Attachment B, a financial summary of Premier Home Health Care Services, Inc. indicates that the facility has maintained positive working capital in 2010 and experienced negative working capital in 2011, maintained positive stockholder's equity and experienced a net income of \$3,404,579 and \$3,049,601 for 2010 and 2011, respectively.

The applicant has indicated the reason for the negative working capital in 2011 was due to cash payments related to out of state acquisitions and the negative impact of retroactive rate adjustments related to the finalization of Medicaid Personal Care Service reimbursement rates for the years 2009 through 2011 for the applicant and related subsidiaries. As of August 31, 2012, Premier's working capital has improved by approximately \$2,900,000.

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	Organizational Chart
BFA Attachment B	Financial Summary 2010-2011, Premier Home Health Care Services, Inc.
BFA Attachment C	Internal Financial Summary as of 6/30/12, Premier Home Health Care Services, Inc.
BFA Attachment D	Pro-forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of December, 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 Premier Home Health Care Services, Inc. as the new operator of Gentiva Health Services Certified Home Health Agency, 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

121120 E

Premier Home Health Care Services, Inc.



APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an Amendment to the Bylaws of Premier Home Health Care Services, Inc., which is 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 # 121263-E  
**Selfhelp Family Home Care, Inc.**

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

**Program:** Certified Home Health Agency  
**Submitted:** April 19, 2012

## Executive Summary

### Description

Selfhelp Family Home Care, Inc. is a not-for-profit corporation requesting approval to become established as a certified home health agency (CHHA) under Article 36 of the Public Health Law, to provide services in Bronx, Kings, Queens, New York, Westchester, Nassau and Suffolk counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to Section 760.5 of Title 10 NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHAs. Selfhelp submitted an application in response to the competitive RFA, and was awarded RFA approval. This CON application is in response to the RFA approval.

DOH Recommendation  
Contingent approval.

### Need Summary

The applicant provided data for each county proposed relating to the criteria set forth in 709.1(a) including factors such as population growth, ethnic makeup of the population, rate of elderly living alone, disability prevalence in the elderly population, insurance status of the population, and health status of the population. The applicant discusses the 709.1(a) criteria for the general population in the county as well as the target population of the CHHA; HIV/AIDs patients and Holocaust survivors. The applicant conducted an analysis of the data presented to show a need for the CHHA services in the proposed counties. They also

demonstrated a need for CHHA services within the proposed target population.

### Program Summary

Review of the Personal Qualifying Information indicates that the applicant has the appropriate character and competence under Article 36 of the Public Health Law.

### Financial Summary

There are no project costs associated with this application.

Incremental Budget:	<i>Revenues:</i>	\$ 15,768,700
	<i>Expenses:</i>	<u>15,523,100</u>
	<i>Gain/(Loss):</i>	\$ 245,600

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 current Certificates of Good Standing for each of the following attorneys: Peter Jakes and Ernes Bial. [CHA]
2. Submission of a photocopy of the applicant's finalized and executed Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's finalized bylaws, with evidence of adoption, 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

**December 6, 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 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.

Applications that were not presented to the Public Health and Health Planning Council with a recommendation for approval at either the August 2012 or October 2012 meetings were considered deferred. The department notified RFA applicants that we are exercising our authority under the RFA Section VII.D.5 to seek clarifications and revisions of applications from those applicants whose applications have been deferred. Letters dated September 17<sup>th</sup> and 27<sup>th</sup> were sent to these applicants through NYSECON and included information related to the review and evaluation criteria and characteristics of approved applicants.

Additionally, the opportunity to arrange a meeting or phone conference with the Division of Home and Community Based Services to discuss the RFA criteria that was used to evaluate each application was made available to each applicant

### Competitive Review

The CON determination of need was based on the applicant's response to the RFA which includes any additional information submitted by the applicant in response to the aforementioned September 17<sup>th</sup> and 27<sup>th</sup> letters. The applications were reviewed 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;
- Description of a 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.

Selfhelp Family Home Care, Inc is affiliated with Selfhelp Community Services, Inc. which operates a special needs CHHA that provides services to people with HIV/AIDS. Selfhelp has partnered with FECS (a large community based social services and mental health provider) to form SinglePoint Care Network. This newly formed organization will deliver delegated care management services on behalf of MCOs. SinglePoint recently signed a contract with HealthPlus/Amerigroup MLTCP to provide delegated care management services on behalf of the plan throughout the proposed service area.

Selfhelp specifically discussed MRT initiatives that would be supported through approval of their application: MRT #5 Reduce and Control CHHA Utilization, MRT #90 Mandatory Enrollment in Managed Long Term Care Plans, and MRT #196 Supportive Housing Initiative. The applicant can support the goals of the MRT based on their history with their operational special needs CHHA and LHCSA and the network of other providers and linkages they have with the community. The IPA they were involved in creating will help control CHHA utilization.

Selfhelp has current contracts with the following MLTCPs: Wellcare, VNS Choice, Guildnet, Arch Care Senior Life, Fidelis Care at Home, Centerlight (CCM), HIP/Emblem, MetroPlus.

The applicant provided data for each county proposed relating to the criteria set forth in 709.1(a) including factors such as population growth, ethnic makeup of the population, rate of elderly living alone, disability prevalence in the elderly population, insurance status of the population, and health status of the population. The applicant discusses the 709.1 (a) criteria for the general population in the county as well as the target population of the CHHA; HIV/AIDs patients and Holocaust survivors. The applicant conducted an analysis of the data presented to show a need for the CHHA services in the proposed counties. They also demonstrated a need for CHHA services within the proposed target population.

The applicant discussed how approval of their application will improve access to home health care services and how they will enhance care coordination and ensure continuity of care for individuals currently receiving services. They have a history of serving high cost and complex cases and discussed Telehealth and Chronic Disease Management Programs they have developed to address the need of patients with heart disease and diabetes.

The applicant thoroughly describes their quality improvement plan including how customer satisfaction surveys are conducted through a CMS-approved vendor. The responses are summarized and reported to the agency. Results are reviewed to identify any patterns, trends or issues. Areas are identified for improvement. They have a detailed process to handle complaints. They perform root cause analysis to identify underlying causes of adverse events or performance and discuss partnering with other providers to prevent adverse events and improve health outcomes.

#### Recommendation

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

## Programmatic Analysis

### Background

Selfhelp Family Home Care, Inc. is a not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law to provide services in Bronx, Kings, Queens, New York, Westchester, Nassau and Suffolk counties.

The applicant proposes to operate the CHHA from an office located at 520 Eighth Avenue, New York, New York 10018. 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 Selfhelp Family Home Care, Inc. comprises the following individuals:

**Peter H. Jakes, Esq.** – President  
Partner, Willkie Farr & Gallagher, LLP

**Ernes L. Bial, Esq.** – Treasurer  
Senior Counsel, Montgomery McCracken Walker & Rhodes, LLP

Affiliations:

- Selfhelp Community Services, Inc.
- Selfhelp Family Homecare

**Mary Mayer** – Secretary  
Retired

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A ten year review of the operations of the following facilities was performed as part of this review for the time periods specified (unless otherwise specified):

Selfhelp Community Services, Inc.  
Selfhelp Family Homecare

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.

Review of the Personal Qualifying Information indicates that 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 Budget

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

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicaid	\$4,521,800	11,429,700
Medicare	1,612,400	4,288,000
Private Pay	<u>20,400</u>	<u>51,000</u>
Total Revenues	\$6,154,600	\$15,768,700
Expenses	<u>6,171,200</u>	<u>15,523,100</u>
Net Gain(Loss)	(\$16,600)	\$245,600

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

<u>Payor</u>	<u>Year One And Year Three</u>
Medicare Fee-For-Service	21.0%
Medicare Managed Care	3.3%
Medicaid Fee-For-Service	14.0%
Medicaid Managed Care	58.0%
Private Pay	0.4%
Charity Care	3.3%

Expense and utilization assumptions are based on the existing CHHA Program's historical experience. Revenues are reflective of the Medicaid Episodic Payment system.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$2,587,183, appear reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates a net loss of \$16,600 in the first year and a net income of \$245,600 in the third year. Revenue is based on current payment rates for Certified Home Health Agencies. The submitted budget appears reasonable.

Presented as BFA Attachment A is the financial summary of Selfhelp Community Services, Inc. which shows the applicant has maintained positive working capital and net assets and achieved net profit of \$591,696 from operations for 2011. Presented as BFA Attachment B is the internal financial summary of Selfhelp Community Services, Inc. as of June 30, 2012, which shows the applicant has maintained positive working capital and net assets and experienced a net loss of \$2,027,351. The applicant has stated the reason for the losses were due to the facilities investment portfolio suffering a year end loss, reversals of old receivables from St. Vincent's Hospital and depreciation. To improve operations the facility has signed several managed care contracts which will lead to growth within the home care operations.

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 Selfhelp Community Services, Inc. year ended June 30, 2011
BFA Attachment B	Financial Summary for Selfhelp Community Services, Inc. June 30, 2012 internals

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of December, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish a certified home health agency (CHHA) to serve Bronx, Kings, Queens, New York, Westchester, Nassau and Suffolk Counties, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

121263 E

Selfhelp Family Home Care, Inc.



APPROVAL CONTINGENT UPON:

1. Submission of current Certificates of Good Standing for each of the following attorneys: Peter Jakes and Ernes Bial. [CHA]
2. Submission of a photocopy of the applicant's finalized and executed Certificate of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's finalized bylaws, with evidence of adoption, 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:

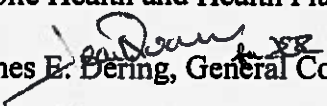
Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:**  James E. Dering, General Counsel

**DATE:** October 17, 2012

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of AIDS Community Services of Western New York, Inc.

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Attached is the 2011 Certificate of Amendment of the Certificate of Incorporation of AIDS Community Services of Western New York, Inc. The corporation seeks retroactive approval to change its name to "EHS, Inc." AIDS Community Services of Western New York, Inc. is a not-for-profit corporation that was established pursuant to Article 28 of the Public Health Law to operate a diagnostic and treatment center. Therefore, Public Health and Health Planning Council approval for a change of corporate name is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Be advised that a Certificate of Amendment to change the corporate name was actually accomplished in September of 2011, but was never presented to PHHPC or its predecessor. The entity has been operating as "EHS, Inc." since that time.

Also attached is a letter from President and CEO Ronald T. Silverio. As explained in that letter, the need for PHHPC approval was discovered when Medicare denied reimbursement for medical services because the name on the current Certificate of Operation did not match the name Medicare has on file.

The Department has no objection to the name change, and the Certificate of Amendment is in legally acceptable form.

Attachments



**EHS, Inc.**

Help for Today. Hope for Tomorrow.

June 6, 2012

Mr. Keith McCarthy  
NYSDOH  
Hedley Park Place  
433 River St., Sixth Floor  
Troy, NY 12180

Dear Mr. McCarthy,

We are an Article 28 Diagnostic & Treatment Center. A copy of our Certificate of Operation #1401227R is enclosed. We changed our legal name to EHS, Inc. on September 26, 2011. We are requesting a new Certificate of Operation under our new name. Also enclosed, please find our restated Certificate of Incorporation, IRS determination letter, and the NYS Department of State entity status form.

We discovered the need to procure a revised Certificate of Operation when Medicare explained that they would not be reimbursing us for medical services until our Certificate of Operation matched our new name change that they have on file. Any way that you can fast-track this request would be very much appreciated.

Please contact me should you require any additional information.

Many thanks,

Ronald T. Silverlo  
President/CEO

cc: Glen Miller, NYSDOH Western Regional Office

**STATE OF NEW YORK**

**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of  
the Department of State, at the City of  
Albany, on September 26, 2011.

A handwritten signature in black ink, appearing to read "D. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

110926000178

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

AIDS COMMUNITY SERVICES OF WESTERN NEW YORK, INC.

Under Section 803 of the Not-For-Profit Corporation Law

We, the undersigned, being the Chairman of the Board, the President and the Secretary of AIDS COMMUNITY SERVICES OF WESTERN NEW YORK, INC., do hereby certify:

(1) The name of the corporation is AIDS COMMUNITY SERVICES OF WESTERN NEW YORK, INC. The name under which the corporation was formed is BUFFALO AIDS TASK FORCE, INC.

(2) The certificate of incorporation of AIDS COMMUNITY SERVICES OF WESTERN NEW YORK, INC. was filed by the Department of State on the 30th day of November, 1983. The said corporation was formed under the Not-For-Profit Corporation Law of the State of New York.

(3) AIDS COMMUNITY SERVICES OF WESTERN NEW YORK, INC. 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 said law. The corporation under section 201 of the Not-For-Profit Corporation Law.

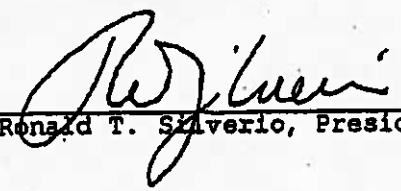
(4) FOURTH: The Certificate of Incorporation is hereby amended to effect a change of name of the Corporation and the address for process. To effect the foregoing amendment, Article First of the Certificate of Incorporation is hereby amended to read as follows:

"ARTICLE FIRST: The name of the Corporation is: EHS, INC.

"ARTICLE FOURTEENTH: The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process against the Corporation may be served, and the post office address to which the Secretary of State shall mail a copy of any such process served upon him: c/o Rollis Kohn LLP, 438 Main Street, Suite 225, Buffalo, New York 14202."

(5) This amendment to the certificate of incorporation of AIDS COMMUNITY SERVICES OF WESTERN NEW YORK, INC. was authorized by the affirmative vote of a majority of the members of the entire Board of Directors as a meeting duly called and held for that purpose on the 20<sup>th</sup> day of September, 2011

IN WITNESS WHEREOF, the undersigned have subscribed this certificate and affirm the statements herein as true under the penalties of perjury this 22<sup>nd</sup> day of September, 2011.

  
Ronald T. Silverio, President

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of AIDS Community Service of Western New York, Inc., dated September 22, 2011.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**M E M O R A N D U M**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel

**DATE:** October 3, 2012

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of New York Foundation for Elder Care

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Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of New York Foundation for Elder Care. This not-for-profit corporation seeks approval to change its name to "New York Foundation for Eldercare." The corporation currently solicits contributions to support organizations and institutions that benefit elderly persons, such as nursing homes and assisted living facilities. Public Health and Health Planning Council approval for a change of corporate name is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated January 12, 2012 from Thomas W. Williams, attorney for the corporation. As explained in that letter, the name change is in addition to amendments that eliminate: the membership structure of the corporation, the expansion of its purpose, and the expansion of eligible beneficiaries. These other amendments do not require the Council's approval.

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments



# MINTZ LEVIN

Thomas W. Williams | 212-692-6727 | [twilliams@mintz.com](mailto:twilliams@mintz.com)

666 Third Avenue  
New York, NY 10017  
212-935-3000 phone  
212-983-3115 fax  
[www.mintz.com](http://www.mintz.com)

January 12, 2012

**Via Electronic Transmission**

New York Department of Health  
Public Health and Health Planning Council  
Empire State Plaza  
99 Washington Avenue  
Albany, NY 12237  
Attention: Colleen Frost

**Re: Amendment to Certificate of Incorporation**

Dear Ms. Frost:

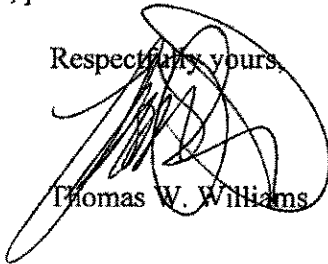
Enclosed please find attached the proposed Amendment to the Certificate of Incorporation of The New York Foundation for Elder Care.

The amendment provides for the following changes to original Certificate of Incorporation:

- change of the name to “The New York Foundation for Eldercare”;
- the elimination of the membership structure of the Foundation;
- the expansion of its purpose; and
- the expansion of eligible grant recipients.

Thank you in advance for your attention to this matter. If you have any questions or concerns, or need any further information, please do not hesitate to contact me.

Respectfully yours,



Thomas W. Williams

enclosures

**Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.**

BOSTON | WASHINGTON | NEW YORK | STAMFORD | RESTON | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON



organizations or institutions the purpose of which is to benefit Nazi victims, particularly those requiring nursing home and old age home care.

2. By voluntarily making expenditures and disbursements to and for the benefit of indigent persons, especially victims of Nazi prosecutions, whether or not resident in the United States.

3. By providing and/or funding programs which will increase the awareness, knowledge and understanding of the health concerns that impact individuals of advanced age, including education related to both prevention of health and other concerns, and improving the health and well-being of such individuals.

4. By providing and/or funding programs which will increase awareness and understanding of the challenges and needs of individuals of advanced age.

5. By providing and/or funding educational programs about issues facing individuals of advanced age.

6. By engaging in and/or funding activities designed to improve the practice of geriatric medicine including, but not limited to, the support of research and the improvement of training for health and medical professionals.

7. To have and exercise all powers necessary and convenient to effect any and all of the foregoing purposes for which the corporation is formed, together with all the powers now or hereafter granted to it by the New York Department of State.

6. Paragraph EIGHTH of the Certificate of Incorporation of the Corporation, which sets forth the limitations on the use of income by the Corporation, is hereby amended to read as follows:

EIGHTH: No part of the income of the corporation shall inure to the benefit of any trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to the corporation affecting one or more of its purposes), and no trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation. No part of the activities of the corporation shall be carrying on propaganda, or otherwise attempting, to influence

legislation, or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

7. This Amendment to the Certificate of Incorporation of the Corporation was authorized by the unanimous vote of the members of the Corporation at a meeting held on October 24, 2011.
8. The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address within the State of New York to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: P.O. Box 750236, Forest Hills, New York 11375-0236.

**IN WITNESS WHEREOF**, the Corporation has caused this certificate to be signed by its authorized officer, on this 24<sup>th</sup> day of October, 2011.



---

Ron Elton  
Co-President

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of New York Foundation for Elder Care, dated October 24, 2011.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel

**DATE:** September 12, 2012

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of Horizon Human Services, Inc.

---

Attached is the 1995 Certificate of Amendment of the Certificate of Incorporation of Horizon Human Services, Inc. The corporation seeks retroactive approval to change its name to "Horizon Health Services, Inc." Horizon Human Services, Inc. is a not-for-profit corporation that was established pursuant to Article 28 of the Public Health Law to operate a diagnostic and treatment center. Therefore, Public Health and Health Planning Council approval for a change of corporate name is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Be advised that a Certificate of Amendment to change the corporate name was actually accomplished in 1996, but was never presented to PHHPC or its predecessor. The entity has been operating as "Horizon Health Services, Inc." since that time.

Also attached is a letter from former Vice President Herbert M. Weis. As explained in that letter, the name change is intended to more accurately reflect the range of integrated medical and behavioral health services the corporation provides and to differentiate the corporation from other human services agencies that are not health service providers.

The Department has no objection to the name change, and the Certificate of Amendment is in legally acceptable form.

Attachments

#7

CERTIFICATE OF AMENDMENT  
OF THE CERTIFICATE OF INCORPORATION  
OF  
HORIZON HUMAN SERVICES, INC.

Under Section 803 of the Not-For Profit Corporation Law

The undersigned, President and Secretary, respectively, of Horizon Human Services, Inc., for the purpose of amending the Certificate of Incorporation pursuant to Section 803 of the Not-For-Profit Corporation Law, hereby certify:

1. The name of the corporation is Horizon Human Services, Inc. The corporation was formed under the name Mental Health Services - Erie County North Central Corporation II.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on June 20, 1975, under the Not-for-Profit Corporation Law.

3. A restated Certificate of Incorporation of the Corporation was filed by the Department of State on November 19, 1982 under the Not-for-Profit Corporation Law.

4. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law. The Corporation is and shall hereafter continue to be Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

5. The Certificate of Incorporation of the Corporation is hereby amended to change the name of the corporation. Article 1

of the Certificate of Incorporation is hereby amended to read:

"1. The name of the Corporation is HORIZON HEALTH SERVICES, INC."

6. The foregoing amendment to the Certificate of Incorporation was authorized by unanimous vote of the Board of Directors at a meeting of the Board of Directors of the Corporation duly called and held, there being no members of other persons entitled to vote thereon.

7. The Corporation hereby designates the Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

P.O. Box 764

Amherst, New York 14226

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IN WITNESS WHEREOF, the undersigned has executed this Certificate this 22 day of December, 1995, and affirmed the statements contained herein as true under penalties of perjury.



Anne D. Constantino, President



Alice Sullivan, Secretary



Anne D. Constantino



**Administrative Office**  
3020 Bailey Avenue, 2nd Floor  
Buffalo, NY 14215  
716.831.1800

**Bailey Kensington Center**  
3020 Bailey Avenue  
Buffalo, NY 14215  
716.831.0200

**Bailey LaSalle Center**  
3297 Bailey Avenue  
Buffalo, NY 14215  
716.833.3822

**Batavia Recovery Center**  
314 Ellicott Street  
Batavia, NY 14020  
585.815.0247

**Boulevard Center**  
1370 Niagara Falls Boulevard  
Tonawanda, NY 14150  
Addictions 716.833.3708  
Mental Health 716.833.3792

**Family Recovery Center**  
6495 Transit Road, Suite 800  
East Amherst, NY 14051  
716-418-8531

**Hertel Elmwood Center**  
699 Hertel Avenue Suite 350  
Buffalo, NY 14207  
716.831.1977

**Lockport Center**  
36 East Avenue  
Lockport, NY 14094  
716.433.2484

**Main Amherst Center**  
60 East Amherst Street  
Buffalo, NY 14214  
716.834.6401

**Niagara Falls Center**  
6520 Niagara Falls Boulevard  
Niagara Falls, NY 14304  
716.283.2000

**Niagara Falls  
City Market Center**  
1750 Pine Avenue  
Niagara Falls, NY 14301  
716.805.1080

**Sanborn Health Center**  
8321 Inducon Drive East  
Sanborn, NY 14132  
716.850.5550

**Tonawanda Center**  
36 Delaware Street  
Tonawanda, NY 14150  
716.831.1850

**Union Lession Center**  
Union Lession Plaza  
2563 Union Road, Suite 800  
Cheektowaga, NY 14227  
716-668-7622

May 24, 2012

Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Room 2464  
Empire State Plaza  
Albany, NY 12237

Attention: Michelle A. Petruzzelli, Esq.  
Senior Attorney

Re: Certificate of Amendment to the Certificate of Incorporation of  
Horizon Human Services, Inc. ("HHS")

Dear Ms. Petruzzelli:

I am writing in response to your letter of April 30, 2012 directed to Patricia  
Chrzanowski of this office. In answer to your inquiries:

1. As you requested, enclosed is a copy of HHS' Certificate of Incorporation and all amendments and restatements.
2. The Certificate of Amendment was accomplished in 1996, so unfortunately at this point we are not able to determine for certainty why the Certificate was not presented to PHHCP at that time. It is possible that since the Department of Health was not one of the agencies that approved the original Certificate of Incorporation, it was mistakenly not included when the name change was filed. You will see by the enclosed that the original Certificate was filed in 1975, but medical services were not added until 1990. At this point, we can only determine that it was an error that was not caught and corrected by any party.
3. The Certificate was accepted by the Secretary of State for filing with no objection and no indication of a violation of the statute and/or regulation, so the error was not detected at that point and the filing was completed.



Bureau of House Counsel  
Division of Legal Affairs  
May 24, 2012  
Page 2

We realized this error when we requested that the company name be amended on the Operating Certificates.

Thank you for your advice and consideration. Please contact me if you need any further information. Otherwise, please let us know how you would like us to proceed.

Very truly yours,



Carolyn Messana-Morrow  
Chief Legal Counsel



Board of Directors  
Michael Mitrinet, Chair  
Eileen Joyce, Vice Chair  
Nancy Herman, Secretary  
Mark Cramer, Esq.  
Charles Rech  
Lyn Teleaco  
Alison L. Mohammed

President/CEO  
Anne D. Constantino

Executive Director  
Carol S. Sabatino

Medical Director  
Hok J. Ka, MD

ADMINISTRATIVE OFFICE  
3020 Bailey Avenue, 2nd Floor  
Buffalo, New York 14215  
716-831-1800  
Fax: 716-831-1818  
horizon-health.org

BAILEY KENSINGTON CENTER  
3020 Bailey Avenue  
Buffalo, New York 14215  
716-831-0200  
Fax: 716-831-0206

BAILEY LASALLE CENTER  
3297 Bailey Avenue  
Buffalo, New York 14215  
716-833-3622  
Fax: 716-834-4557

BLACK ROCK CENTER  
699 Hertel Avenue, Suite 350  
Buffalo New York 14207  
716-831-1977  
Fax: 716-831-1985

BOULEVARD CENTER  
1370 Niagara Falls Boulevard  
Tonawanda, New York 14150  
716-833-3708  
Fax: 716-833-3711

CENTRAL PARK CENTER  
60 East Amherst Street  
Buffalo, New York 14214  
716-834-6401  
Fax: 716-834-6782

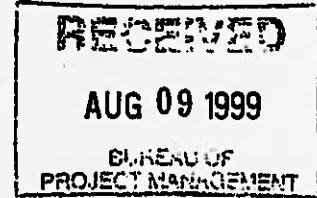
HOLDEN CENTER  
158 Holden Avenue  
Buffalo, New York 14214  
716-834-0282  
Fax: 716-834-1613

FORMAN CENTER  
142 Forman Street  
Buffalo, New York 14211  
716-831-1970  
Fax: 716-831-1974

NIAGARA COUNTY CENTER  
6560 Niagara Falls Boulevard  
Niagara Falls, New York 14304  
716-831-1840  
Fax: 716-831-1839

August 3, 1999

Ms. Julia Richards  
Bureau of Project Management  
NYS Department of Health  
Suite 303  
433 River Street  
Troy, New York 12180-2299



RE: Corporate Name Change

Dear Ms. Richards:

As we discussed earlier today, Horizon Human Services changed its corporate name to Horizon Health Services in 1996. We apologize for our oversight in failing to inform your offices.

I have attached a copy of the Certificate of Amendment of our Certificate of incorporation and a filing receipt from the Department of State describing the name change. This change was implemented to more accurately reflect the range of integrated medical and behavioral health services we provide and to differentiate us from other human service agencies that are not health service providers.

Should you require additional information, please contact me.

Sincerely,

Herbert M. Weis, Ph.D.  
Vice President

Cc: Anne Constantino  
Caroyn Messana-Morrow

Supporting Our Clients' Hopes and  
Goals for Health and Self Sufficiency

A member of Quality Behavioral Health

17244

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Horizon Human Services, Inc., dated December 22, 1995.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, *JD Dering for JED* General Counsel

**DATE:** October 2, 2012

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of the Jewish Home Foundation, Inc. ("the Foundation")

---

Attached is the proposed certificate of amendment of the certificate of incorporation of the Jewish Home Foundation, Inc. This not-for-profit corporation seeks approval to change its name to "Jewish Senior Life Foundation" and to add Jewish Senior Life Community Services, Inc., a new not-for-profit tax exempt affiliate that will engage on a charitable basis in unregulated services for elderly and disabled persons, as a new beneficiary to their fundraising activities. The corporation currently solicits contributions for the Jewish Senior Life and its affiliates. Public Health and Health Planning Council approval for a change of corporate name is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (2).

Also attached is a letter dated July 28, 2011, from Eric Stonehill, Esq., the corporation's attorney. As explained in that letter, the corporation believes that the name change will reflect its broader purpose.

The Department has no objection to the proposed name change, and the proposed certificate of amendment of the certificate of incorporation is in legally acceptable form.

Attachments

**HARRIS BEACH** PLLC  
ATTORNEYS AT LAW

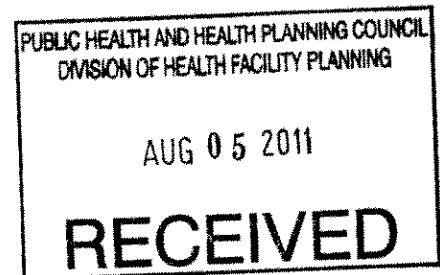
99 GARNSEY ROAD  
PITTSFORD, NY 14534  
(585) 419-8800

**ERIC STONEHILL ESQ.**

DIRECT: (585) 419-8641  
FAX: (585) 419-8811  
ESTONEHILL@HARRISBEACH.COM

July 28, 2011

Colleen Frost  
Executive Secretary  
Public Health & Health Planning Council  
New York State Department of Health  
Division of Health Facility Planning  
Hedley Building  
433 River Street  
Troy, NY 12180



Re: Jewish Home Foundation, Inc.

Dear Ms. Frost:

The purpose of this letter is to request approval by the New York State Public Health and Health Planning Council (the "Council") of the proposed Restated Certificate of Incorporation of Jewish Home Foundation, Inc. pursuant to Section 2801-a(1) of the New York Public Health Law and Sections 404(o) and 804(a)(ii) of the New York Not-for-Profit Corporation Law. A copy of the proposed Restated Certificate of Incorporation is enclosed. Also enclosed for your convenience are copies of the initial Certificate of Incorporation, which was filed by the New York Department of State on March 13, 1979, a Restated Certificate of Incorporation filed on January 29, 1993, and two Certificates of Amendment of the Certificate of Incorporation filed on September 5, 1997 and August 4, 2000, respectively.

By way of background, the Foundation was organized to solicit funds for Jewish Home of Rochester ("Jewish Home"). Over the years the purposes of the Foundation were enlarged to add the not-for-profit tax exempt affiliates of the Jewish Home as they were created, including but not limited to a parent corporation now named "Jewish Senior Life," which is the sole member of Jewish Home and each of its affiliates (but not the Foundation, which is governed by a self-perpetuating Board of Directors and is independent). The Foundation now wishes to further amend its Certificate of Incorporation: (1) to change its corporate name to Jewish Senior Life Foundation, so that it better reflects the scope of its purposes; and (2) to add Jewish Senior Life Community Services, Inc., a new not-for-profit tax exempt affiliate that will engage on a charitable basis in unregulated services for elderly and disabled persons. In addition, ministerial amendments were made in renumbering the paragraphs of the Certificate of Incorporation to reflect the prior deletion of former Sections 5 and 6 regarding the members and directors of the Foundation.

Colleen Frost  
Executive Secretary  
July 28, 2011  
Page 2

HARRIS BEACH <sup>PLLC</sup>  
ATTORNEYS AT LAW

Please do not hesitate to contact me if representatives of the Council have questions or require further information to process this request. Thank you for your cooperation in this matter.

Sincerely,

HARRIS BEACH PLLC



Eric Stonehill

ES:slc  
Enclosures

c: Samantha Standing CFRE, Vice President of Development

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
JEWISH HOME FOUNDATION, INC.**

Under Section 805 of the Not-for-Profit Corporation Law

The undersigned, being the President of Jewish Home Foundation, Inc., hereby certifies:

1. The name of the corporation is: Jewish Home Foundation, Inc.
2. The corporation's Certificate of Incorporation was filed by the Department of State on March 13, 1979, pursuant to the Not-for-Profit Corporation Law.
3. The corporation's Certificate of Incorporation is hereby amended to effect the following amendments:
  - (a) to amend Section 1 to change the name of the corporation to Jewish Senior Life Foundation, Inc;
  - (b) to amend Section 3 to add Jewish Senior Life Community Services, Inc. as a designated beneficiary of the corporation and to reflect the new name of Jewish Home & Infirmary of Rochester, N. Y., Inc; and
  - (c) to renumber the paragraphs of the Certificate of Incorporation to reflect the prior deletion of former Sections 5 and 6 regarding the members and directors of the corporation.
4. The text of the Certificate of Incorporation, as amended, is hereby restated to read as hereinafter set forth in full.

1. Name. The name of the corporation is: Jewish Senior Life Foundation, Inc.
2. Type. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law. It is and shall be a type B corporation under Section 201 of the Not-for-Profit Corporation Law.
3. Purpose. The corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes, and more particularly to provide funds to or for the benefit of Jewish Senior Life, which is a New York not-for-profit corporation, and its not-for-profit, tax exempt affiliates, including but not limited to Jewish Home of Rochester and any other entities that may affiliate with Jewish Senior Life and have received Public Health and Health Planning Council establishment approval under Article 28 of the Public Health Law; Jewish Home of Rochester Enriched Housing, Inc. and any other entities that may affiliate with Jewish Senior Life and operate adult care facilities approved by the Commissioner of Health; Jewish Home of Rochester



Senior Housing, Inc.; and Jewish Senior Life Community Services, Inc. To this end, the corporation shall:

A. solicit, accept, hold, invest, reinvest and administer gifts, grants, bequests, contributions, devises, benefits of trusts, endowments and property of any kind without limitation as to amount or value;

B. use, disburse or pay the income or principal thereof exclusively for the foregoing purposes;

C. do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof, but not for the pecuniary profit of its members, directors, officers or any private person; and

D. in furtherance of the above purposes, have power to solicit and receive grants and contributions from private and public sources, together with all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law.

4. Limitation of Purposes and Powers. Notwithstanding the foregoing, the corporation shall be limited in the exercise of its enumerated and general powers by the following:

A. No part of the activities of the corporation shall involve carrying on propaganda, attempting to influence legislation or participating or intervening in any political campaign on behalf of any candidate for public office;

B. The corporation shall not carry on any activities or make any expenditures or distributions not permitted to be carried on or made by a corporation qualifying as an exempt organization under Section 501(c)(3) of the United States Internal Revenue Code of 1986 as it now exists or as it may hereafter be amended or modified by corresponding provisions of any subsequent federal tax laws;

C. No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, officer of the corporation or to any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation in the furtherance of its purpose);

D. In the event of dissolution, all of the remaining assets and property of the corporation shall, after necessary expenses thereof, be distributed to one or more of the not-for-profit affiliates of the corporation, provided that such distributee(s) shall then qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York. If none of the corporation's not-for-profit affiliates shall so qualify at the time of dissolution, then distribution shall be made to such other organization or organizations that are organized and operated exclusively for Jewish charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization or organizations under

Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and having charitable purposes similar to those of the corporation's not-for-profit affiliates, subject to an order of a Justice of the Supreme Court of the State of New York. For the purpose of this paragraph, an "affiliate" shall mean any not-for-profit organization that controls, is controlled by, or is under common control with the corporation, and any other not-for-profit organization that expressly and specifically is benefited or supported by the corporation;

E. Nothing contained herein shall authorize the corporation to undertake or carry on any of the activities specified in Section 404(a) - (n), (p) - (s), or (u) - (v) of the Not-for-Profit Corporation Law of the State of New York;

F. The corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws;

G. The corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws;

H. The corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws;

I. The corporation shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws;

J. The corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any subsequent federal tax laws;

K. Nothing contained in this Certificate of Incorporation shall authorize the corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital services or health-related services or to operate a drug maintenance program, a certified home health agency, a hospice or a health maintenance organization, or to provide a comprehensive health services plan, as defined and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law.

5. Office. The office of the corporation shall be located in the County of Monroe, State of New York.

6. Territory. The territory in which the operations of the corporation are principally to be conducted is the County of Monroe, State of New York, but the operations of the corporation shall not be limited to such territory.

7. Post Office Address. The Secretary of State is 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 process in any action or proceeding against the corporation which may be served upon him is 2021 Winton Road South, Rochester, New York 14618.

8. This Restated Certificate of Incorporation and the foregoing amendments of the Certificate of Incorporation were authorized by the affirmative vote of a majority of the entire Board of Directors of the corporation, which vote was at least equal to a quorum. The corporation has no members entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned has subscribed this Certificate of Amendment this 22 day of July, 2011.



Howard Konar  
President



Jewish Senior *Life*  
Community Services, Inc.

November 9, 2011

Colleen Frost  
Executive Secretary  
Public Health & Health Planning Council  
New York State Department of Health  
Division of Health Facility Planning  
Hedley Building  
433 River Street  
Troy, NY 12180

RECEIVED

NOV 14 2011

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Re: Jewish Home Foundation, Inc.

Dear Ms. Frost:

Pursuant to the request of Diana Yang, Senior Attorney in the Bureau of House Counsel of the New York State Department of Health, I am writing in support of the application for approval of the Restated Certificate of Incorporation of Jewish Home Foundation, Inc. (the "Foundation"). The application was initially submitted to you by letter from Eric Stonehill of Harris Beach PLLC dated July 28, 2011.

I am the President of Jewish Senior Life Community Services, Inc. ("JSL Community Services"), which is named as a beneficiary of the Foundation in the purposes stated in the proposed Restated Certificate of Incorporation. This will confirm that JSL Community Services is aware of its proposed inclusion as a beneficiary of the Foundation and will accept funds raised by the Foundation on its behalf.

Sincerely,

Daniel I. Katz  
President

cc: Diana Yang  
New York State Department of Health  
Bureau of House Counsel

Samantha Standing CFRE, Vice President of Development  
Eric Stonehill, Esq.

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Jewish Home Foundation, Inc., dated July 22, 2011.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**M E M O R A N D U M**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Derog, General Counsel *James E. Derog*

**DATE:** September 12, 2012

**SUBJECT:** Proposed Restated Certificate of Incorporation of Nassau County AHRC Foundation, Inc.

---

Nassau County AHRC Foundation, Inc. (the "Foundation") requests Public Health and Health Planning Council ("PHHPC") approval of the attached proposed Restated Certificate of Incorporation. Public Health Law § 2801-a (6) and Not-for-Profit Corporation Law § 804 (a) (i) require that amendments and restatements of an Article 28 not-for-profit corporation's Certificate of Incorporation which alter the corporate purpose be approved by PHHPC.

In 1994, the Foundation was formed pursuant to Not-for-Profit Corporation Law § 402 to benefit the people of Nassau County, New York, with mental retardation and developmental disabilities. In 2002, the Public Health Council approved the filing of a Certificate of Amendment to the Foundation's Certificate of Incorporation that amended the Foundation's corporate purpose to include the solicitation of funds for the benefit of Advantage Care Diagnostic and Treatment Center, Inc. The Foundation's proposed Restated Certificate of Incorporation adds to its purposes the solicitation of funds for the benefit of Brookville Center for Children's Services, Inc. and Nassau County Association for the Help of Retarded Citizens, Inc. The Foundation's proposed Restated Certificate of Incorporation also eliminates from its purposes words limiting the benefits provided to those entities within Nassau County. Lastly, the Foundation's proposed Restated Certificate of Incorporation adds language stating that the Foundation is not authorized to provide Early Intervention services.

In addition to the proposed Restated Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval:

- 1) An executed and notarized affidavit of the Foundation's President authorizing the expansion of the Foundation's corporate purpose and use of Foundation assets;
- 2) The Foundation's current bylaws;

- 3) A letter, dated October 17, 2011, from applicant's attorney requesting PHHPC approval of the Restated Certificate of Incorporation of Nassau County AHRC Foundation, Inc.;
- 4) A letter, dated August 20, 2012, from applicant's attorney providing: (a) a generalized description of the fundraising activities to be undertaken by the Foundation; (b) information identifying the organizational relationships between the Foundation and the Article 28 beneficiaries; and (c) a list of any entities which control or are controlled by the Foundation and the nature of such relationships;
- 5) A letter from Terrence Ulrich, President of the Brookville Center for Children's Services, Inc., acknowledging intent to accept funds raised by the Foundation;
- 6) A letter from Sandra Gumerove, President of Nassau County Association for the Help of Retarded Citizens, Inc., acknowledging intent to accept funds raised by the Foundation; and
- 7) Disclosure information regarding the Foundation's Board of Directors.

The proposed Restated Certificate of Incorporation is in legally acceptable form.

Attachments.

RESTATED  
CERTIFICATE OF INCORPORATION  
OF

NASSAU COUNTY AHRC FOUNDATION, INC.

(Under Section 805 of the New York Not-for-Profit Corporation Law)

THE UNDERSIGNED, being the President and an authorized officer of Nassau County AHRC Foundation, Inc. (the "Corporation"), does hereby certify:

1. The name of the Corporation is Nassau County AHRC Foundation, Inc. This name has never been changed.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 30, 1994, pursuant to the New York Not-for-Profit Corporation Law. The Certificate of Incorporation of the Corporation was previously amended on October 24, 2002 and on December 19, 2008.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law and is a Type B corporation under Section 201 of that Law.
4. The amendments to the Certificate of Incorporation of the Corporation effected by this Restated Certificate of Incorporation relate to (i) striking certain words from the purposes clause to remove the reference to Nassau County, (ii) adding to the purposes clause references to Brookville Center for Children's Services, Inc. and Nassau County Association for the Help of Retarded Citizens, Inc., and (iii) adding certain language as required by the New York State Department of Health.



5. To accomplish the foregoing amendments, the following paragraphs in the Certificate of Incorporation of the Corporation are hereby amended to effect the changes hereinafter stated:

(a) Paragraph THIRD, subparagraph (d), detailing certain of the Corporation's purposes, is amended by striking the words "exclusive" and "of Nassau County, New York" and adding "Brookville Center for Children's Services, Inc. and Nassau County Association for the Help of Retarded Citizens, Inc.," so that Paragraph THIRD, subparagraph (d) reads as follows:

"d. To do the foregoing for the benefit of people with mental retardation and developmental disabilities and not-for-profit organizations which support, serve or otherwise assist them, including without limitation, Advantage Care Diagnostic and Treatment Center, Inc., Brookville Center for Children's Services, Inc. and Nassau County Association for the Help of Retarded Citizens, Inc."

(b) Paragraph SEVENTH, concerning required authorizations for corporate activities, is amended by adding the following language: "Nothing contained in this Certificate of Incorporation shall authorize the Corporation to provide Early Intervention services without obtaining all approvals required by Title II-A of Article 25 of the Public Health Law, Title 10 of the Codes, Rules and Regulations of the State of New York, or any other applicable law or regulation," so that Paragraph SEVENTH reads as follows:

"SEVENTH: Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in the Not-For-Profit Corporation Law, Section 404 (b) to (n), (p), (r), (s), (u) and (v) or the Social Services Law, Section 460-a. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital service or health related service or to operate a home care services agency, a hospice or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 36, 40, and 44, respectively, of the Public Health Law. In addition, the Corporation's purposes do not authorize the Corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purposes. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to provide Early Intervention services without obtaining all approvals required by Title II-A of Article 25 of the Public Health Law, Title 10 of the Codes, Rules and Regulations of the State of New York, or any other applicable law or regulation.

6. Pursuant to Section 802 of the New York Not-for-Profit Corporation Law, the Board of Directors of the Corporation adopted the foregoing amendments to the Certificate of

Incorporation of the Corporation and authorized the restatement of the Certificate of Incorporation of the Corporation by unanimous vote of the directors present at a meeting held on September 21, 2011, at which a quorum of directors was acting throughout. The Corporation has no members so action of the Board of Directors is sufficient.

7. The text of the Certificate of Incorporation of the Corporation will be hereby restated as amended or changed herein to read as follows:

**"FIRST:** The name of the Corporation is Nassau County AHRC Foundation, Inc.

**SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

**THIRD:** The objects and purposes of the Corporation shall be exclusively charitable and without limiting the generality of the foregoing, shall include the following objects and purposes:

- a. To receive and administer funds for charitable purposes.
- b. To hold property, or any undivided interest therein, without limitation as to amount of value.
- c. To dispose of any such property or income in such manner, as, in the judgment of the directors, will best promote the purposes of the Corporation without limitation, except such limitations, if any, as may be contained in the instrument under which property is received, this Certificate of Incorporation, the By-Laws of the Corporation or any applicable laws.
- d. To do the foregoing for the benefit of people with mental retardation and developmental disabilities and not-for-profit organizations which support, serve or otherwise assist them, including without limitation, Advantage Care Diagnostic and Treatment Center, Inc., Brookville Center for Children's Services, Inc. and Nassau County Association for the Help of Retarded Citizens, Inc.
- e. To publicly solicit funds in furtherance of the foregoing purposes.
- f. To do any other lawful thing incidental to, connected with or useful, suitable or proper for the furtherance or accomplishment of the foregoing purposes or any other lawful purpose permitted by the laws of the State of New York.

**FOURTH:** As a means of accomplishing the foregoing purposes, the Corporation shall have all the powers set forth in Section 202 of the Non-for-Profit Corporation Law of the State of New York and, in general, may exercise such powers that now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth or are necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation, subject to such limitations as are or may be prescribed by law.

**FIFTH:** Notwithstanding any other provisions of these Articles, the Corporation shall not carry on any activities or have or exercise any powers not permitted to be carried on or exercised:

a. By a corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

b. By a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended.

**SIXTH:** It is the intention of the Corporation to qualify and remain qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Accordingly:

a. No part of the net earnings of the Corporation shall inure to the benefit of any individual; provided that nothing contained in this Certificate shall prevent the payment in good faith of reasonable and proper remuneration to any officer, director or employee of the Corporation, or to any other person, organization, firm, association, corporation or institution in return for services actually rendered to the Corporation.

b. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; nor shall the Corporation participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office, and nothing herein shall authorize the Corporation to engage in the practice of any profession required to be licensed by Title VIII of the Education Law.

c. Upon the dissolution of the Corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue law), as the Board of Directors shall determine. Any of such assets not

so disposed of shall be disposed of by the Supreme Court of the county in which the principal office of the Corporation is then located, exclusively, for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

d. In the event that in any year, the Corporation qualifies as a "private foundation", as that term is defined in Section 509 of the Internal Revenue Code of 1986, as amended,

(i) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to subject it to tax under Section 4942 of said Code, and

(ii) The Corporation shall not:

1. engage in any act of self-dealing as defined in Section 4941(d) of said Code;
2. retain any excess business holdings as defined in Section 4943(c) of said Code;
3. make any investments in such manner as to subject the Corporation to tax under Section 4944 of said Code; or
4. make any taxable expenditure as defined in Section 4945 of said Code.

**SEVENTH:** Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in the Not-For-Profit Corporation Law, Section 404 (b) to (n), (p), (r), (s), (u) and (v) or the Social Services Law, Section 460-a. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital service or health related service or to operate a home care services agency, a hospice or a health maintenance organization, or to provide a comprehensive health services plan, as defined in and covered by Articles 28, 36, 40, and 44, respectively, of the Public Health Law. In addition, the Corporation's purposes do not authorize the Corporation to establish, operate or maintain an adult home, residence for adults or enriched housing program as provided for by Article 7 of the Social Services Law, or to solicit contributions for any such purposes. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to provide Early Intervention services without obtaining all approvals required by Title II-A of Article 25 of the Public Health Law, Title 10 of the Codes, Rules and Regulations of the State of New York, or any other applicable law or regulation.

**EIGHTH:** The Corporation shall be a Type B Corporation under Section 201 of the Non-for-Profit Corporation law of the State of New York.



WAIVER OF NOTICE

I, \_\_\_\_\_, a Justice of the Supreme Court of the State of New York, Tenth Judicial District, hereby approve the foregoing Restated Certificate of Incorporation of NASSAU COUNTY AHRC FOUNDATION, INC. and consent that the same be filed with the Office of the Secretary of State of the State of New York.

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Justice of the Supreme Court of the State of New  
York, Tenth Judicial District

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**NASSAU COUNTY AHRC FOUNDATION, INC.**  
**(Under Section 805 of the Not-for-Profit Corporation Law)**

**SIMPSON THACHER & BARTLETT LLP**  
**425 Lexington Avenue**  
**New York, New York 10017**

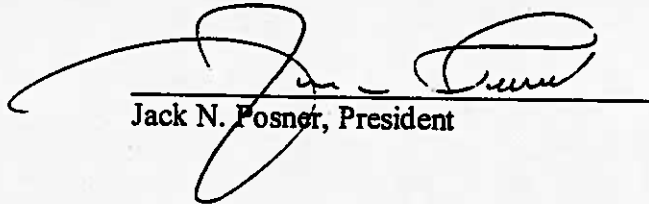
STATE OF NEW YORK            )  
  : ss.:  
COUNTY OF NASSAU            )

Jack N. Posner, being duly sworn, deposes and says:

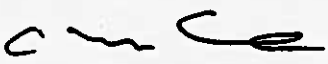
1. I am the President of Nassau County AHRC Foundation, Inc. (the "Corporation"), a corporation formed under the New York Not-for-Profit Corporation Law on November 30, 1994.

2. By the unanimous vote of the directors present at a meeting held on September 21, 2011, the Corporation's Board of Directors unanimously approved a Restated Certificate of Incorporation (the "Restated Certificate"), which includes amendments to Paragraph THIRD, subparagraph (d), of the Corporation's Certificate of Incorporation setting forth certain of the Corporation's purposes.

3. The Corporation will use any assets received prior to, and held as of, September 21, 2011, for the purposes stated in its Certificate of Incorporation filed with the Department of State on November 30, 1994, and amended on October 24, 2002, and the Corporation will use any assets received after September 21, 2011 for the purposes stated in the Restated Certificate approved by the Board of Directors on September 21, 2011.

  
\_\_\_\_\_  
Jack N. Posner, President

Sworn to before me this 13<sup>th</sup>  
day of October, 2011.

  
\_\_\_\_\_  
Notary Public

**ANDREW M. COHEN**  
Notary Public, State of New York  
No. 02C06110079  
Qualified in Nassau County  
Commission Expires May 24, 2012



AMENDED AND RESTATED BY-LAWS  
OF  
NASSAU COUNTY AHRC FOUNDATION, INC.

ARTICLE I - OFFICES

The principal office of the Nassau County AHRC Foundation, Inc. (the "Corporation") shall be at 189 Wheatley Road, Brookville, New York 11545.

The Corporation may also have offices at such other places within or without this state as the Board may from time to time determine or the business of the Corporation may require.

ARTICLE II - PURPOSES

1. To receive and administer funds for charitable purposes within the meaning of the Internal Revenue Code of 1986, as Amended.

2. To publicly solicit and receive funds for the benefit of the mentally retarded and developmentally disabled and entities which serve them so long as such entities are operated as not-for-profit organizations.

3. To hold any property, or any undivided interest therein, without limitation as to amount of value.

4. To dispose of any such property and to invest, reinvest, and deal with the principal or income in such manner, as, in the judgment of the directors, will best promote the purposes of the Corporation without limitation, except such limitations, if any, as may be contained in the instrument under which property is received, this Certificate of Incorporation, the By-Laws of the Corporation or any applicable laws.

5. To do any other lawful thing incidental to, connected with or useful, suitable or proper for the furtherance or accomplishment of the foregoing purposes or any other lawful purpose permitted by the laws of the State of New York.

ARTICLE III - NO MEMBERS

The Corporation has no members within the meaning of Section 601(a) of the Not-for-Profit Corporation Law of the State of New York. The Corporation, however, may use the terms "members" and "membership" regarding dues, fees, goods, benefits, privileges, and services as authorized by the Board of Directors.

## ARTICLE IV - DIRECTORS

### 1. MANAGEMENT OF THE CORPORATION

A. The Corporation shall be managed by the Board of Directors which shall consist of not less than three directors and not more than fifteen directors, including any ex-officio member of the Board appointed pursuant to Section 5 of this Article. Each director shall be at least eighteen (18) years of age.

### 2. ELECTION AND TERM OF DIRECTORS

The directors will be elected at the annual meeting of the Board of Directors by a majority of the directors then in office, and each director will hold office until the next annual meeting and the earliest of the election or appointment and qualification of such director's successor or until such director's death, resignation, or removal.

### 3. INCREASE OR DECREASE IN NUMBER OF DIRECTORS

The number of directors may be increased or decreased only in accordance with the amendment provisions of these By-Laws.

### 4. NEWLY CREATED DIRECTORSHIPS AND VACANCIES

Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board shall be filled by the vote of a majority of the directors then in office, although less than a quorum. A director shall be elected to hold office for the unexpired term of his/her predecessor.

### 5. EX-OFFICIO DIRECTORS

The Chairpersons of the Finance, Guardianship, and Buildings and Grounds Committees of the Nassau County Chapter of NYSARC, Inc. (or successor committees) will serve as ex-officio members of the Board of Directors. The ex-officio members shall be counted in determining the presence of a quorum and shall be entitled to vote.

### 6. REMOVAL OF DIRECTORS

Provided there is a quorum of not less than a majority of the directors then in office present, a director may be removed for cause by the vote of a majority of the Board of Directors at the meeting at which such action is taken.

The Chairperson of the Finance, Guardianship, and Buildings and Grounds Committees of the Nassau County Chapter of NYSARC, Inc. shall hold office solely as a result of the position which they hold with the Nassau County Chapter of NYSARC, Inc. and upon termination of that position, for any reason, then their position as a member of the Board of Directors of the Corporation shall immediately terminate.

7. RESIGNATION

A director may resign at any time by giving written notice to the Board, the President or the Secretary of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

8. ATTENDANCE REQUIRED

Unexcused absence from three (3) consecutive meetings of the Board of Directors shall be a cause for removal of a director.

9. QUORUM OF DIRECTORS

Unless otherwise provided in the Certificate of Incorporation, a majority of the entire Board shall constitute a quorum for the transaction of business or of any specified item of business.

10. ACTION OF THE BOARD

Unless otherwise required by law, the vote of a majority of the directors if a quorum is present at the time of the vote, shall be the act of the Board. Each director present shall have one vote.

11. PLACE AND TIME OF BOARD MEETINGS

The annual meeting of the Board shall be held in November. Meetings of the Board will be held at the location, within or without the State of New York, which is fixed by the Board of Directors or, in the case of a special meeting, by the person or persons calling the special meeting.

12. NOTICE OF MEETINGS OF THE BOARD, ADJOURNMENT

Regular meetings of the Board may be held without notice at such time and place as it shall from time to time determine. Special meetings of the Board shall be held upon notice to the directors and may be called by the President upon three days notice to each director either personally or by mail or by fax; special meetings shall be called by the President or by the Secretary in a like manner on written request of two directors. Notice of a meeting need not be given to any director who submits a waiver of notice whether before or after the meeting or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to him.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of the adjournment shall be given to all directors who were absent at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

13. EXECUTIVE AND OTHER COMMITTEES

The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an executive committee and such other committees as appropriate consisting of at least three directors. These committees shall serve at the pleasure of the Board.

14. COMPENSATION OF DIRECTORS

The Corporation will not pay any compensation to directors for services rendered to the Corporation, except that directors may be reimbursed for reasonable expenses incurred in the performance of their duties to the Corporation.

ARTICLE V - OFFICERS

1. OFFICES, ELECTION, TERM

Unless otherwise provided for in the Certificate of Incorporation, the Board may elect or appoint a President, one or more Vice-Presidents, a Secretary and a Treasurer, and such other officers as it may determine, who shall have such duties, powers and functions as are hereinafter provided. Each officer shall hold office for the term for which he is elected or appointed and until his successor has been elected or appointed and qualified.

The officers of the Corporation shall be elected at the first meeting of the Board of Directors occurring during the calendar year, whether the annual, regular, or special meeting of the Board.

2. REMOVAL, RESIGNATION SALARY

Any officer elected or appointed by the Board may be removed by the Board with or without cause. In the event of the death, resignation or removal of any officer, the Board in its discretion shall elect or appoint a successor to fill the unexpired term. Any two or more offices may be held by the same person, except the offices of President and Secretary. No officer of the Corporation shall be entitled to receive a salary for serving as an officer of the Corporation.

3. PRESIDENT

The President shall preside at all meetings of the Board; he/she shall have the responsibility for the general management of the affairs of the Corporation and shall see that all order and resolutions of the Board are carried into effect. He/she shall execute all authorized deeds, instruments, documents and contracts on behalf of the Corporation and in its name, all of which shall be binding upon the Corporation. The President, upon consent of the Board of Directors, is authorized to appoint committees to conduct studies and investigations and make reports and recommendations to the Board of Directors.

4. VICE-PRESIDENTS

During the absence or disability of the President, the Vice-President, or, if there are more than one, the Executive Vice-President, shall have all the powers and functions of the President. Each Vice-President shall perform such other duties as the Board shall prescribe.

5. SECRETARY/TREASURER

SECRETARY

The Secretary shall keep the minutes of the meetings of the Board of Directors. He/she shall have the custody of the seal of the Corporation and shall affix and attest the same to documents when duly authorized by the Board of Directors. He/she shall attend to the giving and serving of all notices of the Corporation, and shall have charge of such books and papers as the Board of Directors may direct; he/she shall attend to such correspondence as may be assigned to him, and perform all the duties incidental to his office.

TREASURER

The Treasurer shall have the care and custody of all the funds and securities of the Corporation, and shall deposit said funds in the name of the Corporation, in such bank or trust company as the directors may elect; he/she shall, when duly authorized by the Board of Directors, sign and execute all contracts in the name of the Corporation, when countersigned by the President; he/she shall also sign all checks, drafts, notes, and orders for the payment of money which shall be duly authorized by the Board of Directors and shall be countersigned by the President; he/she shall at all reasonable times exhibit his/her books and accounts to any director of the Corporation upon application at the office of the Corporation during ordinary business hours. At the end of each corporate year, he/she shall have an audit of the accounts of the Corporation done by an outside C.P.A. or C.P.A. firm, and shall present such audit in writing at the annual meeting of the Board of Directors, at which time he/she shall also present an annual report setting forth in full the financial conditions of the Corporation.

6. EXECUTIVE OFFICER

The Corporation shall have an executive as its chief administrative officer whose title shall be determined from time to time by the Board and who shall be responsible for the general management of the affairs of the Corporation and shall see that all orders and resolutions of the Board, as to the Corporation, are carried out into effect. He/she shall be responsible for ensuring compliance with all applicable federal, state and local statutes, regulations, rules and ordinances.

7. DUTIES

The duties of all officers shall be as stated above or as modified by subsequent resolutions approved by the Board.

8. SURETIES AND BONDS

In case the Board shall so require, any officer or agent of the Corporation shall execute to the Corporation a bond in such sum and with such surety or sureties as the Board may direct, conditioned upon the faithful performance of his duties to the Corporation and including responsibility for negligence and for the accounting for all property, funds or securities of the Corporation which may come into his hands.

ARTICLE VI - CONSTRUCTION

If there be any conflict between the provisions of the Certificate of Incorporation and these By-Laws, the provisions of the Certificate of Incorporation shall govern.

ARTICLE VII - INDEMNIFICATION

Any person acting on behalf of the Corporation in attaining its corporate purposes and within the bounds of his/her authority to do so, shall be indemnified against any claims, settlements, or judgments, as well as any reasonable legal costs associated with such claim, settlements or judgments, by the Corporation as provided for by the statutes of the State of New York. Specifically included herein are officers and directors of the Corporation and employees functioning on corporate committees; any of whom was functioning in this capacity at the time of the alleged wrongdoing.

The provisions of this Article will refer only to those instances wherein an employee or agent of the Corporation is made a defendant in any claim or legal action as a result of his/her legal relationship with the Corporation.

ARTICLE VIII - AMENDMENTS

These By-Laws and the Corporation's Certificate of Incorporation may be adopted, amended, or repealed only by the majority vote of the directors.

ARTICLE IX - SEAL

The seal of the Corporation shall be as follows:

Amended: September 21, 2011.

3/19

**SIMPSON THACHER & BARTLETT LLP**  
425 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017-3954  
(212) 455-2000

DIRECT DIAL NUMBER

(212) 455-2874

FACSIMILE (212) 455-2602

E-MAIL ADDRESS

lafreeman@stblaw.com

VIA FEDERAL EXPRESS

October 17, 2011

Re: Nassau County AHRC Foundation, Inc.

Ms. Jean Quarrier  
Director, Bureau of House Counsel  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

**RECEIVED**

OCT 18 2011

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Dear Ms. Quarrier:

I write to request the written consent of the Public Health Council to the amendment and restatement of the Certificate of Incorporation of Nassau County AHRC Foundation, Inc. (the "Foundation"). I spoke to Mary Callahan of your office on September 23, 2011, and I am submitting the enclosed materials in accordance with the guidance that I received from Ms. Callahan.

Please find enclosed the following documents:

- (i) At Tab A, a copy of the executed and notarized Restated Certificate of Incorporation of Nassau County AHRC Foundation, Inc., together with an executed and notarized affidavit of the Foundation's President regarding the use of the Foundation's assets;

Ms. Jean Quarrier

-2-

October 17, 2011

(ii) At Tab B, a letter from the President of Brookville Center for Children's Services, Inc. ("Brookville"), acknowledging that Brookville has been added to the Restated Certificate of Incorporation of the Foundation as a beneficiary of the Foundation and confirming that Brookville will accept funds raised by the Foundation and will use those funds in furtherance of its charitable purposes;

(iii) At Tab C, a letter from the President of Nassau County Association of the Help of Retarded Citizens, Inc. ("Citizens"), acknowledging that Citizens has been added to the Restated Certificate of Incorporation of the Foundation as a beneficiary of the Foundation and confirming that Citizens will accept funds raised by the Foundation and will use those funds in furtherance of its charitable purposes; and

(iv) At Tab D, a copy of the original Certificate of Incorporation of the Foundation, together with all prior amendments thereto.

I would appreciate it if you could arrange for the Public Health Council to consent to the amendment and restatement of the Foundation's Certificate of Incorporation.

Please mail the written consent to me at the following address:

Lisa A. Freeman  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017

After all consents to the amendment and restatement have been obtained, I will arrange for the filing of the Foundation's Restated Certificate of Incorporation with the New York State Department of State.



Ms. Jean Quarrier

-3-

October 17, 2011

If you have any questions or need any additional information, please do not hesitate to contact me at (212) 455-2874. Thank you in advance for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lisa A. Freeman', with a long horizontal flourish extending to the right.

Lisa A. Freeman

Enclosures

cc: Michael Mascari  
Victoria B. Bjorklund, Esq.

SIMPSON THACHER & BARTLETT LLP  
425 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017-0954  
(212) 455-2000

FACSIMILE (212) 455-2602

DIRECT DIAL NUMBER

(212) 455-2874

E-MAIL ADDRESS

lafreeman@stblaw.com

VIA FEDERAL EXPRESS

August 20, 2012

Re: Proposed Restated Certificate of Incorporation of Nassau  
County AHRC Foundation, Inc.

Mr. Thomas J. King  
Bureau of House Counsel  
Assistant Attorney  
New York State Department of Health  
Empire State Plaza  
Corning Tower  
24th Floor  
Albany, NY 12237-0031

RECEIVED

AUG 21 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Dear Mr. King:

I write in response to your letter, dated August 8, 2012 and attached at Tab A, regarding the Restated Certificate of Incorporation of Nassau County AHRC Foundation, Inc. (the "Foundation"). Please find below our responses to your inquiries.

1) **A copy of the Foundation's current bylaws.**

Please find attached at Tab B a copy of the Foundation's current by-laws, amended and restated as of September 21, 2011.

2) **A generalized description of the fundraising activities to be undertaken by the Foundation.**

The Foundation's fundraising activities consist of special events, annual/special fund appeals, grant solicitation, planned giving, and capital campaigns. Fundraising is conducted through mailings as well as online solicitations.

The Foundation also conducts fundraising activities on behalf of Advantage Care Diagnostic and Treatment Center, Inc. ("Advantage Care"), Brookville Center for Children's Services, Inc. ("Brookville") and Nassau County Association for the Help of Retarded Citizens, Inc. ("Citizens"). These fundraising activities include special events, annual/special fund appeals, grant solicitation, and campaigns. Fundraising is conducted through mailings as well as online solicitations.

**3) Information identifying the organizational relationships or affiliations between the Foundation and the Article 28 beneficiaries.**

The Foundation is the sole member of, and has the right to elect the directors of, Advantage Care.<sup>1</sup> As discussed above, the Foundation also conducts fundraising on behalf of Advantage Care. Advantage Care is a New York not-for-profit corporation formed for purposes which include: (a) to plan, construct, erect, build, acquire, reconstruct, own, maintain and operate a diagnostic and treatment center at 189 Wheatley Road, Brookville, Nassau County, New York pursuant to Article 28 of the Public Health Law; and (b) to provide at such location services and facilities to out-of-hospital or ambulatory patients, by or under the supervision of a physician, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition.

**4) A list of any entities which control or are controlled by the Foundation and the nature of such relationships.**

The Foundation is also the sole member of, and has the right to elect the directors of, Brookville, Citizens, Community Services for the Mentally Retarded, Inc.

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<sup>1</sup> None of the other organizations of which the Foundation is the sole member are Article 28 beneficiaries.

Mr. Thomas J. King

-3-

August 20, 2012

("CSMR"), and PHSI, Inc. ("PHSI"), all of which are New York not-for-profit corporations. As discussed above, the Foundation conducts fundraising on behalf of Brookville and Citizens. Brookville was formed for purposes which include operating special class programs for preschool and school age children with developmental disabilities and providing special class programs in integrated settings to preschool students with and without disabilities. The agency also provides residential services for twenty-four (24) children with developmental disabilities. Citizens was formed for purposes which include assisting individuals with developmental disabilities in every manner possible including but not limited to education, training, rehabilitation, recreation, and to the extent permitted, guardianships. CSMR was formed for purposes which include providing community mental retardation facilities in Nassau County for vocational training, vocational counseling, vocational rehabilitation, sheltered employment, care, treatment and residence of persons afflicted with mental retardation. PHSI was formed for purposes which include performing studies, feasibility surveys and planning with respect to the development, formation and support of a managed care organization.

\* \* \*

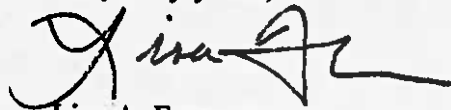
Mr. Thomas J. King

-4-

August 20, 2012

Thank you very much for your assistance with this matter. If you have any additional questions, please do not hesitate to contact me at (212) 455-2874.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa A. Freeman", with a long horizontal flourish extending to the right.

Lisa A. Freeman

**Attachments**

cc: Michael Mascari  
Victoria B. Bjorklund



**Brookville Center**  
for Children's Services, Inc.

189 Wheatley Road, Brookville, NY 11545  
Tel: 516-826-1000 ■ Fax: 516-826-1493

an affiliate of the North Shore-  
LIJ Health System and  
AHRC Nassau

October 14, 2011

**Board of Directors**

**Officers**

Terrence Ullrich  
*President*

Jeffrey Kraut  
*Vice President*

Sandra Gumerove, Esq.  
*Treasurer*

Dennis Dirks  
*Secretary*

**Directors**

Susan Bloomberg

Amy Hagedorn

Dr. Philip Lanzkowsky

Marie Pinckney

Thomas Rzeicki, Esq.

Nassau County AHRC Foundation, Inc.

Attn: Jack N. Posner, President

189 Wheatley Road

Brookville, NY 11545-2699

Re: Restated Certificate of Incorporation of Nassau  
County AHRC Foundation, Inc.

Dear Jack:

I am the President of Brookville Center for Children's Services, Inc. ("Brookville"). I am writing (i) to acknowledge that Brookville has been added to the Restated Certificate of Incorporation of Nassau County AHRC Foundation, Inc. (the "Foundation") as a beneficiary of the Foundation and (ii) to confirm that Brookville will accept funds raised by the Foundation and will use those funds in furtherance of its charitable purposes; *provided, however*, that nothing in this letter will prevent Brookville from continuing to conduct its own fundraising activities or from accepting funds from individuals or entities other than the Foundation.

Very truly yours,

Terrence Ullrich  
President

**Executive Staff**

*Executive Director*

Michael Mascari

*Associate*

*Executive Directors*

Jan Abelseth

Robert C. Goldsmith



189 Wheatley Road  
Brookville, NY 11545

Phone: (516) 626-1000  
Fax: (516) 626-1493

**Officers**

Sandra Gumerove, Esq.  
President

Blanche Fierstein  
Vice President

Rady Bruell  
Treasurer

Agnes Mendes  
Secretary

**Directors**

George A. Bauer III  
Patrick Broderick, Esq.  
John Chase, Esq.  
Joan Crane  
Robert Molloy  
Ellen Moore  
Ellen Steinberger

October 14, 2011

Nassau County AHRC Foundation, Inc.  
Attn: Jack N. Posner, President  
189 Wheatley Road  
Brookville, NY 11545-2699

Re: Restated Certificate of Incorporation of  
Nassau County AHRC Foundation, Inc.

Dear Jack:

I am the President of Nassau County Association for the Help of Retarded Citizens, Inc. ("Citizens"). I am writing (i) to acknowledge that Citizens has been added to the Restated Certificate of Incorporation of Nassau County AHRC Foundation, Inc. (the "Foundation") as a beneficiary of the Foundation and (ii) to confirm that Citizens will accept funds raised by the Foundation and will use those funds in furtherance of its charitable purposes; *provided, however,* that nothing in this letter will prevent Citizens from continuing to conduct its own fundraising activities or from accepting funds from individuals or entities other than the Foundation.

Very truly yours,

Sandra Gumerove  
President



**Board of Directors List 2012**

<b>Name</b>	<b>Position</b>	<b>Address</b>
Jack N. Posner, Esq.	President	1100 Franklin Ave. Garden City, NY 11530
John Chase, Esq.	Secretary	Chase Rathkopf & Chase, LLP 48 Forest Avenue Glen Cove, NY 11542
Robert M. Pascucci	Treasurer	Jobco Incorporated 277 Northern Blvd. Great Neck, NY 11020
Martin B. Boorstein	Director	525 East 72 Street, #311 New York, NY 10021
Rady Bruell	Director	21 Lincoln Road Great Neck, NY 11021
Jack Garofalo	Director	31 Magnolia Drive New Hyde Park, NY 11040
Roslyn Goldmacher	Director	Long Island Development Corp. 400 Post Avenue, Suite 201 A Westbury, NY 11590
Lloyd Groveman	Director	4 Park Drive East Old Westbury, NY 11568
Thomas S. Gulotta	Director	2 Anding Avenue North Merrick, NY 11566
Thomas F. Moore	Director	170 E. Mineola Avenue Valley Stream, NY 11580
Stewart G. Nagler	Director	14 Myrtle Drive Great Neck, NY 11021
Thomas Rosicki, Esq.	Director	Rosicki & Rosicki Associates 51 E. Bethpage Road Plainview, NY 11803
Daniel Serota	Director	Serota Properties 70 East Sunrise Highway Valley Stream, NY 11581
Terrence Ullrich	Director	18 Hickman Street Syosset, NY 11791
Edward Yardeni	Director	Yardeni Research 68 Wheatley Rd Unit 1 Glen Head, NY 11545



## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Restated Certificate of Incorporation of Nassau County AHRC Foundation, Inc. dated October 13, 2011.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council  
**FROM:** James E. Dering, General Counsel  
**DATE:** October 24, 2012  
**SUBJECT:** Proposed Certificate of Incorporation for the St. Elizabeth Seton Children's Foundation

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The attached proposed Certificate of Incorporation of the St. Elizabeth Seton Children's Foundation ("the Foundation"), dated October 4<sup>th</sup>, 2012, is being submitted for Public Health and Health Planning Council approval. The Foundation's certificate includes among its purposes the solicitation of public funds for the benefit of the John A. Coleman School, the New York Foundling Hospital Center for Pediatric Medical and Rehabilitative Care, Inc. (doing business as the Elizabeth Seton Pediatric Center), and the Children's Rehabilitation Center. The Foundation's ability to file the certificate and solicit funds for such purpose depends on the approval of the Public Health and Health Planning Council pursuant to Public Health Law § 2801-a(1) and (6).

In addition to the proposed Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval:

1. The Foundation's bylaws.
2. Letters from the intended beneficiaries acknowledging and approving of the Foundation's proposed fundraising activities on their behalf.
3. A letter from Tracy E. Miller requesting PHHPC approval which includes a description of the fundraising activities that the Foundation will undertake, and the relationship of the Foundation to the supported organizations.
4. Disclosure information regarding the Foundation's board of directors.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

**CERTIFICATE OF INCORPORATION**

CERTIFICATE OF INCORPORATION  
OF  
ST. ELIZABETH SETON CHILDREN'S FOUNDATION

(Under Section 402 of the Not-for-Profit  
Corporation Law of the State of New York)

The undersigned, being a natural person of at least eighteen years of age and acting as the incorporator of the corporation hereby being formed (the "Corporation") under the Not-for-Profit Corporation Law of the State of New York ("Not-for-Profit Corporation Law"), certifies that:

FIRST: The name of the Corporation is "St. Elizabeth Seton Children's Foundation."

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

THIRD: The type of corporation which the Corporation shall be under Section 201 of the Not-for-Profit Corporation Law is Type B.

FOURTH: The Corporation is formed for the following purposes:

(a) To organize, and at all times thereafter to operate exclusively to support the delivery of health care, educational, and related services to children through the services and programs provided by the following corporations formed under the Not-For-Profit Corporation Law: the John A. Coleman School, the New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. d/b/a the Elizabeth Seton Pediatric Center and the Children's Rehabilitation Center, collectively, the "Supported Organizations," provided that each remains qualified as an organization as described in Section 509(a)(1) or 509(a)(2) of the Internal Revenue Code of 1986, as the same is now in effect or as may hereafter be amended and the regulations promulgated thereunder as they now exist or as they may hereafter be amended (collectively, the "Code").

(b) To solicit and receive contributions, perform fundraising activities, obtain money and property, and invest and hold such contributions to provide financial and other resources to support the mission of the Supported Organizations to provide health care, educational, and related services to children.

FIFTH: In furtherance and to the extent of the foregoing corporate purposes, the Corporation shall have all of the general powers set forth in Section 202 of the Not-for-Profit Corporation Law.

**SIXTH:** Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more exempt purposes specified in Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income taxation under Section 501(c)(3) of the Code, 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 or officer of the Corporation or any private individual (except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to or for the Corporation), and no member, officer or director of the Corporation or any private individual shall be entitled to share in the distribution of any of the assets of the Corporation 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 Section 501(h) of the Code), 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 the dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses and liabilities thereof, be distributed or transferred to the Supported Organizations and their programs, or to such other organization or organizations exempt under Section 501(c)(3) of the Code as the Board of Directors of the Corporation may determine by unanimous vote, subject to any requisite approval and/or jurisdiction of the Supreme Court of the State of New York, to be used or administered in a manner that will best accomplish the general purposes of the Corporation.

In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code; and the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code, (b) retain any excess business holdings as defined in Section 4943(c) of the Code, (c) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code, or (d) make any taxable expenditures as defined in Section 4945(d) of the Code or corresponding provisions of any subsequent Federal tax law.

It is intended that the Corporation shall have the status of a corporation under Section 509(a)(3) of the Code. The members of the

Corporation and the members of the Supported Organizations shall be members of the Sisters of Charity of St. Vincent de Paul of New York, a Roman Catholic religious order (the "Sisters of Charity").

**SEVENTH:** The office of the Corporation is to be located in Westchester County, State of New York.

**EIGHTH:** The Corporation shall be operated by a Board of Directors, the number of whom shall not be less than three. The name and address of each of the initial directors of the Corporation until their successors are duly elected and qualified, are as follows:

<u>Name</u>	<u>Address</u>
Carol A. Barnes, SC	<u>20 Washington Square North</u> <u>New York, New York 10011</u>
Peter McKeever	<u>271 West Hills Road</u> <u>New Canaan, Connecticut 06840</u>
Thomas Feuerstein	<u>5 Cliffview Court</u> <u>Princeton Junction, New Jersey 08550</u>

Thereafter, the members of the Corporation shall appoint the Directors of the Corporation and determine their number, which shall not be less than three.

**NINTH:** The Corporation shall have one class of members which at all times shall consist of three (3) to eleven (11) individuals who are members of the Sisters of Charity or persons appointed by another organization exempt under Section 501(c)(3) of the Code that is recognized by the Roman Catholic Church to be the successor organization to the Sisters of Charity.

**TENTH:** The duration of the Corporation is to be perpetual.

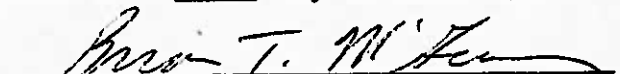
**ELEVENTH:** The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him is: St. Elizabeth Seton Children's

Foundation c/o Chief Executive Officer, Elizabeth Seton Pediatric Center, 300 Corporate Blvd., South Yonkers, New York 10701.

TWELFTH: Nothing herein shall be construed as authorizing the Corporation to engage in or include among its purposes any of the activities mentioned in Section 404 of the Not-for-Profit Corporation Law or in Section 460-a of the Social Services Law of the State of New York, except for fundraising activities permitted pursuant to Sections 404(o) and (t) of the Not-For-Profit Corporation Law.

THIRTEENTH: Nothing contained in this Certificate of Incorporation shall authorize the Corporation within the State of New York to: (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law ("PHL"); (2) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law; or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing in this Certificate of Incorporation shall authorize the Corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

IN WITNESS WHEREOF, the undersigned has made, subscribed and acknowledged this Certificate of Incorporation this 1<sup>st</sup> day of October, 2012.

  
Brian T. McGovern  
Incorporator

Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, New York 10281

## **BYLAWS**



**ST. ELIZABETH SETON CHILDREN'S FOUNDATION**

**BYLAWS**

**ARTICLE I**

**NAME AND OFFICE**

The name of the corporation is "St. Elizabeth Seton Children's Foundation" (hereinafter, the "Foundation"). Its principal office is located in the County of Westchester, the State of New York.

**ARTICLE II**

**FOUNDATION AND PURPOSE**

The Foundation was founded by the religious congregation known as the Sisters of Charity of St. Vincent de Paul of New York (the "Sisters of Charity") and was incorporated in 2012. The purposes of the Foundation are as set forth in its Certification of Incorporation.

**ARTICLE III**

**MEMBERS**

Section 1. **QUALIFICATION.** The membership of the Foundation shall be as set forth in the Certificate of Incorporation. The number of Members shall be no less than three (3) or more than eleven (11) as determined by a majority vote of the Members at a duly called meeting.

Section 2. **ADMISSION.** The initial Members shall be those individuals designated by the Sisters of Charity. Thereafter, the persons eligible for membership may be elected into membership by a majority vote of the Members present at a duly called meeting.

Section 3. **DURATION.** Each person admitted to membership shall be a Member of the Foundation until his or her membership shall terminate by death, resignation, disqualification or by majority vote of the Members removing the Member with or without cause.

Section 4. **RESIGNATION.** Any Member may withdraw from the Foundation by presenting to the Secretary a written statement of resignation.

Section 5. **MEMBERSHIP CHAIRPERSON AND SECRETARY OF THE MEMBERS.** Upon the adoption of these Bylaws and at each annual meeting of the Members thereafter, the Members of the Foundation shall elect from their own membership by a majority vote, a Membership Chairperson and a Secretary. They shall each serve for a term of one (1) year or until their successors have been elected.

Section 6. **MEETINGS.** A meeting of the Members shall be held annually for the election of Directors and the transaction of such other business as may properly come before the Members at the place, time, and date, as may be fixed by the Members. Special meetings shall be held whenever called by any two (2) Members or by the Membership Chairperson. The Membership Chairperson shall preside at all meetings or, in his or her absence, the person appointed by the Membership Chairperson shall preside. The person appointed by the Membership Chairperson (or presiding officer of the meeting) shall act as Secretary of the meeting.

Section 7. **NOTICE OF MEETING.** Notice of the time and place of each meeting of the Members of the Foundation, whether annual or special, shall be given personally or by first class mail, telephone, facsimile or electronic mail and shall be given not less than ten (10) nor more than fifty (50) days before the date of the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. Notice need not be given to any Member who submits a signed Waiver of Notice, nor to any Member who attends such meeting without protesting the lack of notice of the meeting prior to the conclusion of such meeting.

Section 8. **QUORUM.** The presence in person of a majority of the Members of the Foundation shall be necessary to constitute a quorum for the transaction of business. In the absence of a quorum, the Members present by a majority vote, and without notice other than by announcement at the meeting, may adjourn the meeting from time to time, until a quorum shall attend.

Section 9. **ACTION WITHOUT A MEETING.** Whenever Members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by all the Members entitled to vote thereon.

Section 10. **POWERS OF MEMBERS.** The power to approve the following matters shall be reserved to the Members:

- (a) any change in the general character of the Foundation.
- (b) the adoption, amendment or repeal of any plan of dissolution, merger or consolidation.
- (c) the election of the Board of Directors.
- (d) the removal of any Director with or without cause.
- (e) the amendment of the Certificate of Incorporation or the amendment or repeal of these Bylaws.
- (f) The decision by the Board of Directors to purchase, sell, mortgage or lease real property or to sell or dispose of all or substantially all of the Foundation's assets.

#### **ARTICLE IV**

#### **BOARD OF DIRECTORS**

The Board of Directors shall have general power to control and manage the business, affairs, operations, and activities of the Foundation. The Board shall be responsible for overseeing the activities of the Foundation to raise funds, accept contributions of funds or property, and oversee investment or management of such contributions for the benefit of the Elizabeth Seton Pediatric Center, the Children's Rehabilitation Center, and the John A. Coleman School. The Board of Directors shall also ensure compliance with Federal, state and local law. Directors shall receive no compensation for their services, but may be reimbursed for the expenses reasonably incurred by them in the performance of their duties. The Board may authorize any officer or agent of the Foundation to enter into any contract, as necessary, on behalf of the Foundation and in compliance with applicable laws and regulations. The Board of Directors shall be composed of not less than three (3) nor more than thirty-five (35) Directors as determined from time to time by the Members.

**ARTICLE V**  
**ELECTION OF DIRECTORS AND OFFICERS**

Section 1. **DIRECTORS.** The Directors of the Foundation shall be elected by majority vote of the Members at the annual meeting of the Members. At least one (1) Director shall be a member of the Sisters of Charity.

Section 2. **TERM.** Each Director shall serve a three (3) year term. No Director shall serve as Director for more than three (3) consecutive three-year terms. However, following an absence from serving as Director for one (1) year, a person who has previously served three (3) consecutive terms in office as a Director may be re-elected to the Board of Directors. The foregoing term limitation shall not apply to the office of a Director who is a member of the Sisters of Charity, nor shall it reduce the term of the Chairperson while holding such office.

Section 3. **OFFICERS.** At an annual meeting of the Board of Directors, the Board of Directors shall elect by a majority vote the following Corporate Officers of the Foundation who shall serve for three-year terms:

- (a) Board Chairperson
- (b) Vice-Chairperson
- (c) Secretary
- (d) Treasurer.

The Board may appoint or authorize such other officers as it may deem proper. The Chairperson, Vice-Chairperson, Secretary and Treasurer shall be the "Corporate Officers" and shall also be Directors. No person shall serve as Chairperson for more than two (2) consecutive terms, but he or she may be re-elected as Chairperson after not holding such office for at least a year.

Section 4. **RESIGNATION AND REMOVAL OF OFFICERS.** Any Corporate Officer may resign at any time by giving written notice of such resignation to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt of the written notice by the Secretary. Corporate Officers may be removed with or without cause at any time by majority vote of the Members. The Chief Executive Officer and any other management officer of the Foundation may be removed with or without cause at any time by a two-thirds vote of the Directors.

Section 5. **RESIGNATION AND REMOVAL OF DIRECTORS.**

(a) Any Director may resign at any time by delivering written notice of such resignation to the Chairperson of the Board of Directors or the Secretary. Such resignation shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the Chairperson or by the secretary. The acceptance of a resignation shall not be necessary to make it effective.

(b) Any Director may be removed with or without cause at any time by the affirmative vote of a majority of the Members voting at any duly constituted meeting of the Members at which a quorum is present.

Section 6. **VACANCIES AND NEWLY CREATED DIRECTORSHIPS.** Newly created directorships resulting from an increase in the number of Directors as authorized by these Bylaws and vacancies among such Directors for any reason, may be filled by a vote of a majority of the Members to be held within sixty (60) days of the creation of said Directorship or vacancy. A Director elected to fill a vacancy shall serve until the end of the term of the Director being replaced.

**ARTICLE VI**

**MEETINGS OF THE BOARD OF DIRECTORS**

Section 1. **MEETINGS.** There shall be four (4) regular meetings of the Board of Directors, including an annual meeting, held at such times as the Board of Directors may determine or as may be fixed by the Chairperson. The annual meeting and a regular meeting may coincide. The Board Chairperson shall be elected at an annual meeting by a majority vote of the Directors.

Section 2. **SPECIAL MEETINGS.** Special meetings of the Board shall be called at any time by the Chairperson, or upon the written request of at least one-fifth of the total number of Directors then in office.

Section 3. **PLACE OF MEETINGS.** Meetings of the Board of Directors shall be held at the location which is fixed by the Board or in the case of a special meeting, by the person or persons calling the special meeting.

Section 4. **NOTICE OF MEETING.** Notice need not be given of regular meetings if the time and place for such meetings are fixed by the Board of Directors or Chairperson. Notice of each special meeting must be given to each Director not less than five (5) days before such meeting. Notice shall be given personally or by first class mail, telephone, facsimile or electronic mail. Notice of a special meeting need not be given to a Director who submits a signed waiver of notice prior to the special meeting.

Section 5. **QUORUM.** Unless a greater proportion is required by law or the Certificate of Incorporation, the presence in person of a majority of the Directors then in office shall be necessary and sufficient to constitute a quorum for the transaction of business. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. In the absence of a quorum, the Directors present by a majority vote and without notice other than by announcement, may adjourn the meeting from time to time until a quorum shall attend. Each Director shall have one vote.

Section 6. **ORDER OF BUSINESS.** The order of business at all meetings of the Board of Directors shall be determined by the Chairperson.

Section 7. **MEETING BY CONFERENCE TELEPHONE.** Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting,

Section 8. **ACTION WITHOUT A MEETING.** Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all voting members of the Board of Directors or such committee consent in writing to the adoption of the resolution authorizing the action. The resolution and the written consents thereto by the members of the Board of Directors or such committee shall be filed with the minutes of the proceedings of the Board of Directors or such committee.

Section 9. **ANNUAL REPORT.** The Board of Directors shall present at the annual meeting of the Members a report certified by a firm of independent public accountants selected by the Board, showing in appropriate detail the following:

(a) The assets and liabilities, including the trust funds, of the Foundation as of the end of the twelve-month fiscal period terminating not more than six months prior to said meeting.

(b) The principal changes in assets and liabilities, including trust funds, during said fiscal period.

(c) The revenue or receipts of the Foundation, both unrestricted and restricted to particular purposes, during said fiscal period.

(d) The expenses or disbursements of the Foundation for both general and restricted purposes, during said fiscal period.

(e) The number of Members of the Foundation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period, and a statement of the place where the names and places of residence of the current Members may be found.

In addition to the foregoing, the Board shall also report to the Members annually regarding the general status and activities of the Foundation. This report shall be filed with the records of the Foundation and a copy thereof entered in the minutes of the proceedings of the annual meeting of the Members.

## **ARTICLE VII**

### **DUTIES AND POWERS OF OFFICERS**

Section 1. **BOARD CHAIRPERSON.** The Board Chairperson shall provide leadership to the Board of Directors and the committees in carrying out their assigned responsibilities to implement the policies, activities and resolutions approved or adopted by the Board of Directors for the management of the affairs of the Foundation. The Board Chairperson shall preside at all meetings of the Board of Directors.

Section 2. **EXECUTIVE OFFICER.**

(a) In a meeting of the Board of Directors, the Board of Directors shall appoint by a majority vote, the Executive Director. The Board may also remove the Executive Director by a majority vote. The Executive Director may be a Director if duly elected as a Director by the Members. The term of office of the Executive Director shall continue until his or her death, resignation or removal from such office with or without cause by the Board of Directors.

(b) The Executive Director of the Foundation shall have the authority and responsibility necessary to operate the Foundation and all of its activities, and shall be responsible for the daily management and operational affairs of the Foundation, subject to the authority of the Board. The Executive Director shall have primary responsibility for management of personnel of the Foundation, budgets, operating and personnel policies, and legal compliance. The Executive Director shall do and perform such other duties and exercise such other powers as from time to time may be assigned by these Bylaws or by the Board of Directors.

Section 3. **VICE-CHAIRPERSON.** The Vice-Chairperson shall act as the deputy of the Board Chairperson. During the absence or disability of the Board Chairperson, the Vice-Chairperson shall have all the powers and functions of the Board Chairperson. The Vice-Chairperson shall perform such specific duties and exercise such powers as are assigned from time to time by the Board Chairperson or by the Board.

Section 4. **TREASURER.** The Treasurer shall:

- (a) Have the custody of the corporate funds and securities;
- (b) Keep full and accurate accounts of receipts and disbursements in the corporate books;
- (c) Deposit all money and other valuables in the name and to the credit of the Foundation in such depositories as may be designated by the Board;
- (d) Disburse the funds of the Foundation as may be ordered or authorized by the Board of Directors and preserve proper vouchers for such disbursements;



(e) Render a full financial report at each regular meeting of the Board of Directors as may be requested;

(f) Be furnished by all corporate officers and agents with such reports and statements as he/she may request as to all financial transactions of the Foundation;

(g) Perform such other duties as required by law, these Bylaws or as may be assigned by the Board of Directors or the Board Chairperson.

Section 5. **SECRETARY.** The Secretary shall:

(a) Attend all meetings of the Board of Directors and record all votes and minutes of all proceedings in a book to be kept for that purpose;

(b) Give or cause to be given all notices as are required under these Bylaws or as required by statute;

(c) Keep in safe custody the seal of the Foundation and affix it to any instrument when authorized by the Board;

(d) Keep all the documents and records of the corporation as required by law or otherwise in a proper and safe manner; and

(e) Perform such other duties as may be prescribed by the Board of Directors or the Board Chairperson.

Section 6. **APPOINTED OFFICERS.** The Board of Directors may appoint such other officers, including one or more Vice Presidents, with such duties and powers as it may specify and may delegate to the Executive Director the power to appoint and to remove any subordinate management officer, agent or employee.

## **ARTICLE VIII**

### **COMMITTEES**

Section 1. **EXECUTIVE COMMITTEE AND OTHER STANDING COMMITTEES.** The Board of Directors, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other standing committees consisting of three or more Directors. The standing committees shall include, without

limitation, a Finance and Audit Committee, and such other standing committees as the Board deems appropriate with such authority as the Board shall by resolution provide. The Executive Committee shall have all the authority of the Board, except that no such committee shall have authority as to the following matters:

(a) The electing of Board members or filling of vacancies in the Board or in any committee.

(b) The fixing of compensation of the Directors for serving on the Board or on any committee (although, in any case, such compensation shall not be permitted under these Bylaws).

(c) The amendment or repeal of any resolution of the Board which by its terms, shall not be so amendable or repealable. Any reference in these Bylaws to the Board of Directors shall include the Executive Committee unless the context or express provision otherwise indicates.

**Section 2. SPECIAL COMMITTEES.** The Board of Directors may designate special committees (as distinguished from standing committees), each of which shall have such authority as is provided in the resolution designating the committee, except that such authority shall not exceed the authority conferred on the Executive Committee by Section 1 of this Article VIII. The members of each special committee shall be appointed by the Board Chairperson with the consent of the Board and may include individuals who are not members of the Board of Directors.

**Section 3. MEETINGS.** Meetings of committees shall be held at such time and place as shall be fixed by the Chairperson of the Foundation or the Chairperson of the committee or by vote of a majority of all of the members of the committee.

**Section 4. QUORUM AND MANNER OF ACTING.** Unless otherwise provided by resolution of the Board of Directors, a majority of all of the members of a committee shall constitute a quorum for the transaction of business and the vote of a majority of all of the members of the committee shall be the act of the committee. The procedures and manner of acting of the committees of the Board including the Executive Committee shall be subject at all times to the directions of the Board of Directors in a manner consistent with these Bylaws.

Section 5. **TENURE OF MEMBERS OF COMMITTEES OF THE BOARD.** Each committee of the Board and every member thereof shall serve at the pleasure of the Board for an indefinite term unless specified otherwise.

**ARTICLE IX**  
**GENERAL PROVISIONS**

Section 1. **CHECKS, NOTES AND CONTRACTS.** The Board of Directors is authorized to select such banks or depositories as it shall deem proper for the funds of the Foundation. The Board shall determine who shall be authorized from time to time, on the Foundation's behalf, to sign checks, drafts or other orders for the payment of money, acceptances, notes, or other evidences of indebtedness, to enter into contracts or to execute and deliver documents and other instruments. No loans shall be contracted on behalf of the Foundation for liabilities in excess of \$100,000 unless specifically authorized by the Board of Directors or the Finance and Audit Committee.

Section 2. **FISCAL YEAR.** The fiscal year of the Foundation shall be fixed by resolution of the Board of Directors.

Section 3. **AMENDMENTS.** These Bylaws may only be amended or repealed or new Bylaws may be adopted only at any regular or special meeting of the Members of the Foundation, provided that a majority of the Members so agree, and further provided that notice of the proposed alterations, amendment or repeal is contained in the notice of such meeting.

Section 4. **BOOKS AND RECORDS.** There shall be kept at the office of the Foundation: (1) correct and complete books and records of account (including annual audited financial statements), (2) minutes of the proceedings of the Board of Directors and the Executive Committee, (3) a current list of the Members, Directors and officers of the Foundation and their residence addresses, (4) a copy of these Bylaws, (5) a copy of the Foundation's recognition of tax exemption with the Internal Revenue Service and correspondence relating thereto, (6) copies of information returns to the Internal Revenue Service, and (7) copies of governmental correspondence related thereto.

**ARTICLE X**  
**INDEMNIFICATION AND INSURANCE**

Section 1. **AUTHORIZED INDEMNIFICATION.** Subject to Article IX of the Foundation's Certificate of Incorporation and unless prohibited under Section 2 hereof or otherwise prohibited by law, the Foundation shall indemnify any person ("Indemnified Person") made, or threatened to be made, a party in any action or proceeding, whether civil, criminal, administrative, investigative or otherwise, including any action by or in the right of the Foundation, by reason of the fact that he or she (or his or her testator or intestate), whether before or after adoption of this Section, (a) is or was a Director, officer or Member of the Foundation, or (b) in addition is serving or served, in any capacity, at the request of the Foundation, as a Director, officer or Member of any other corporation, or any partnership, joint venture, trust, employee benefit plan or other enterprise. The indemnification shall be subject to Article IX of the Foundation's Certificate of Incorporation and shall be made against all judgments, fines, penalties, amounts paid in settlement (provided the Foundation shall have consented to such settlement) and reasonable expenses, including attorneys' fees and costs of investigation, incurred by an Indemnified Person with respect to any such threatened or actual action or proceeding, and any appeal thereof.

Section 2. **PROHIBITED INDEMNIFICATION.** The Foundation shall not indemnify any person if a judgment or other final adjudication adverse to the Indemnified Person (or to the person whose actions are the basis for the action or proceeding) establishes that such person's acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Section 3. **ADVANCEMENT OF EXPENSES.** The Foundation shall, on request of any Indemnified Person who is or may be entitled to be indemnified by the Foundation, pay or promptly reimburse the Indemnified Person's reasonably incurred expenses in connection with a threatened or actual action or proceeding prior to its final disposition. However, no such advancement of expenses shall be made unless the Indemnified Person makes a binding, written commitment to repay the Foundation, with interest, for any amount advanced for which it is ultimately determined that he or she is not entitled to be indemnified under the law.

Section 4. **DETERMINATION OF INDEMNIFICATION.** Indemnification mandated by a final order of a court of competent jurisdiction will be paid. After termination or disposition of any actual or threatened action or proceeding against an Indemnified Person, if indemnification has not been ordered by a court the Board of Directors shall, upon written request by the Indemnified Person, determine whether and to what extent indemnification is permitted pursuant to these Bylaws. Before indemnification can occur, the Board of Directors must explicitly find that such indemnification will not violate the provisions of Section 2 of Article X of these Bylaws. No Director with a personal interest in the outcome, or who is a party to such actual or threatened action or proceeding concerning which indemnification is sought, shall participate in this determination. If a quorum of disinterested Directors is not obtainable, the Board of Directors shall act only after receiving the opinion in writing of independent legal counsel that indemnification is proper in the circumstances under then applicable law and these Bylaws.

Section 5. **INSURANCE.** The Foundation shall purchase and maintain Directors' and officers' liability insurance in commercially reasonable amounts as determined by the Board of Directors. To the extent permitted by law and such insurance is available, the insurance shall insure the Foundation for any obligation it incurs as a result of this Article X or operation of law.

## ARTICLE XI CONFLICTS OF INTEREST

### Section 1. **DEFINITION OF CONFLICTS OF INTEREST; DISCLOSURE.**

(a) Directors, officers, and employees of the Corporation shall not use their positions or knowledge gained therefrom, nor shall they engage in any activities, including, but not limited to, investments or other employment which involve interests in conflict with those of the Corporation.

(b) A person has a "financial interest" if the person has, directly or indirectly, an ownership interest in an entity with which the Foundation has a transaction or arrangement, a compensation arrangement with the Foundation or with an entity with which the Foundation has a transaction or arrangement, or a potential ownership interest or compensation arrangement with an entity with which the Foundation is contemplating a business transaction. Financial interests

include arrangements involving immediate family members of a Director, officer, or employee of the Foundation. Compensation includes indirect remuneration and gifts of a substantial nature. Investments in publicly traded corporations need not be disclosed, so long as the Director, officer or employee owns 5% or less of the stock or equity of the corporation or other entity that is contemplating a business transaction with the Foundation.

(c) In situations where the Foundation is contemplating a financial arrangement or transaction with any outside entity, Directors and officers must disclose any "financial interest" they have with that entity. Employees in a position to influence the business decisions, transactions, or the affairs of the Foundation must also disclose such "financial interests." Directors, officers, and employees who are unsure about the need to disclose a particular arrangement should err on the side of disclosure. A Director, officer or employee who has or learns about a potential conflict of interest should disclose promptly to the Secretary of the Foundation the material facts surrounding any actual or potential conflict of interest, including specific information concerning the terms of any contract or transaction with the Foundation. Directors, officers, and employees shall disclose any such contract or transaction and approval by the Board shall be obtained in accordance with the procedures set forth in this Article before the Foundation enters into the arrangement.

Section 2. **EVALUATION.** When a potential or actual financial interest has been disclosed, the Board shall evaluate whether the terms of the contract, transaction or arrangement are fair and reasonable to the Foundation and consistent with the best interests of the Foundation. Fairness includes, but is not limited to, the concepts that the Foundation should pay no more than fair market value for any goods or services which the Foundation receives, the Foundation should receive fair market value consideration for any goods or services that it furnishes others and the Foundation would not reasonably be expected to obtain a more advantageous transaction with another entity. The Board shall set forth the basis for its decision with respect to approval of contracts or transactions involving conflicts of interest in the minutes of the meeting at which the decision is made, including the basis for determining that the consideration to be paid is fair to the Foundation.

Section 3. **RECUSAL AND VOTE.** If, based on the above evaluation, the Board determines that the contract, transaction or arrangement is fair and reasonable to the Foundation

and consistent with the best interests of the Foundation, the Board may approve the proposed transaction or arrangement, so long as the Board determines, by a majority vote of disinterested Directors, that the proposed transaction is in the Foundation's best interest and is fair and reasonable. The Director or officer with the potential or actual financial interest shall not be present during the discussion of the issue or the vote. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or committee which authorizes such contract or transaction.

Section 4. **VALIDITY OF ACTIONS.** No contract or other transaction between the Foundation and one or more of its Directors or officers, or between the Foundation and any other corporation, firm, association or other entity in which one or more of its officers are Directors or officers, or have a substantial financial interest, shall be either void or voidable for this reason alone or by reason alone that such Director or Directors or officer or officers are present at the meeting of the Board of Directors, or of a committee thereof, which authorizes such contract or transaction, or that his or their votes are counted for such purpose, if the material facts as to such Director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested Director or officer.

Section 5. **VIOLATIONS.** In order to protect the Foundation's interests, the Board will take appropriate disciplinary and corrective action with respect to any Director, officer or committee member who fails to make any disclosure required under this Article XI.

Section 6. **RECORD KEEPING.** The minutes of the Board meeting(s) at which the financial interest of a Director, officer, or employee is considered shall include: the names of the Directors, officers or committee members, if any, who disclosed financial interests; the nature of the financial interest that poses a potential or actual conflict; a summary of the content of the Board's discussions (including any alternatives to the proposed transaction or arrangement); and a record that a vote was taken regarding the proposed transaction or arrangement.

Section 7. **ANNUAL STATEMENT.** Each Director, officer, and member of a committee with Board-delegated powers shall annually affirm, in writing, that he or she: (1) has received a copy of the Board conflict of interest policy stated in this Article XI; (2) has read and

understands the policy; (3) has agreed to comply with the Policy; and (4) understands that the Foundation is a charitable organization and that, in order to maintain its tax-exempt status, the Foundation must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

Section 8. **PERIODIC REVIEW.** The Board shall direct the appropriate officers or consultants of the Foundation to periodically review the Foundation's activities and arrangements to ensure that it operates in a manner consistent with its charitable purposes. Of special concern are whether its compensation arrangements and transactions are reasonable and reflect fair market value for services provided and whether any arrangements for management or administrative services conform to the policies set forth in these Bylaws, are properly recorded and do not result in private inurement or impermissible private benefit.

Adopted by the Members: \_\_\_\_\_, 2012

Signed by:

\_\_\_\_\_

Secretary of Members of the Corporation  
St. Elizabeth Seton Children's Foundation



# CADWALADER

Cadwalader, Wickersham & Taft LLP  
One World Financial Center, New York, NY 10281  
Tel +1 212 504 8000 Fax +1 212 504 6666  
www.cadwalader.com

New York London Charlotte Washington  
Houston Beijing Hong Kong Brussels

October 4, 2012

Ms. Mary Callahan, Esq.  
Director, Bureau of House Counsel  
Division of Legal Affairs  
New York State Department of Health  
Corning Tower -- Room 1408  
Empire State Plaza  
Albany, New York 12237

RECEIVED

OCT - 5 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Re: Application for Public Health and Health Planning Council Approval for  
St. Elizabeth Seton Children's Foundation

Dear Ms. Callahan:

I am writing to request approval by the Public Health and Health Planning Council and a letter of consent to permit filing of the enclosed proposed Certificate of Incorporation for the St. Elizabeth Seton Children's Foundation (the "Corporation") with the New York State Secretary of State. Enclosed for review are the following:

1. A signed and dated original copy of the proposed Certificate of Incorporation of the Corporation;
2. A copy of the proposed bylaws of the Corporation;
3. The original copies of a signed and dated letter from a duly authorized representative of each of the three intended supported organizations: the John A. Coleman School, the New York Foundling Hospital Center for Pediatric, Medical and Rehabilitative Care, Inc. d/b/a the Elizabeth Seton Pediatric Center, and the Children's Rehabilitation Center;
4. A general description of the fundraising activities that the Corporation will undertake (see Exhibit A attached);
5. The following information about each of the three (3) initial directors of the Corporation: (i) name and address; (ii) occupation; (iii) employer name and

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Ms. Mary Callahan  
October 4, 2012

address; and (iv) present affiliations with other charitable or non-profit organizations and such affiliations during the past ten (10) years;

6. A statement identifying the organizational relationship between the Corporation and the three licensed supported organizations (see Exhibit B attached); and
7. A list of any entities, which control, or are controlled by, the Corporation and the nature of such relationships (see Exhibit B attached).

The documents have been submitted at this time to seek approval by the Public Health and Health Planning Council at its December 6, 2012 meeting.

I appreciate your attention to this matter, and would be pleased to provide any additional information required to support the application. Please call me at 212-504-6415 with any questions that you may have.

Sincerely,



Tracy E. Miller

TEM:cm  
Enclosures

## **EXHIBIT A**

### **Application for Approval for St. Elizabeth Seton Children's Foundation**

#### **Description of Fundraising Activities**

The St. Elizabeth Seton Children's Foundation (the "Foundation") will conduct cultivation and fundraising activities identified below in order to realize unrestricted and programmatic philanthropic support on behalf of and to the benefit of the Elizabeth Seton Pediatric Center, John A. Coleman School and the Children's Rehabilitation Center.

##### **Cultivation:**

- Facility Tours (Group and Individual)
- Meetings (Group and Individual)
- Community Outreach (Social Service, Religious Organizations, Schools)
- Printed and Electronic Publication of Collateral and Informational Materials.

##### **Fundraising:**

- Submission of Grant requests to individuals, Public and Private Foundations, Corporations, and Government
- Personal Gift Solicitation
- Annual and Special Appeal Solicitation (mail and electronic)
- Special Events
- Planned Giving.

## **EXHIBIT B**

### **Application for Approval for St. Elizabeth Seton Children's Foundation**

#### **Relationship of the Foundation to the Supported Organizations**

The St. Elizabeth Seton Children's Foundation (the "Foundation") will raise and manage charitable contributions for the benefit of three licensed organizations: the Elizabeth Seton Pediatric Center; the John A. Coleman School, and the Children's Rehabilitation Center (together, the "Supported Organizations"). The Foundation will be controlled by the Sisters of Charity, the same religious organization that controls the Supported Organizations. Specifically, the Sisters of Charity select the corporate members for each of the Supported Organizations and will select the initial members of the Foundation. The Foundation, like the Supported Organizations, will have one class of corporate members who will be individuals who are members of the Sisters of Charity.

#### **Controlling Organizations**

The Foundation will not control other organizations. As noted above, the Sisters of Charity will control the Foundation, through the designation of the corporate members of the Foundation, and by virtue of the fact that all corporate members will be appointed from among the Sisters of Charity.

**LETTERS BY THE SUPPORTED ORGANIZATIONS**

Elizabeth Seton   
**PEDIATRIC CENTER**

*Changing lives, one child at a time*

**To Whom It May Concern:**

The New York Foundling Hospital Center For Pediatric Medical and Rehabilitative Care, Inc. (dba "Elizabeth Seton Pediatric Center") is aware that an application for approval to establish the St. Elizabeth Seton Children's Foundation (the "Foundation") that will solicit funds for the benefit of Elizabeth Seton Pediatric Center will be submitted to the Public Health and Health Planning Council. The Elizabeth Seton Pediatric Center will accept funds raised by the Foundation.

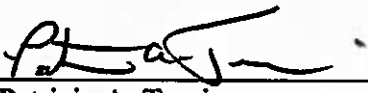
By:   
Patricia A. Tursi  
Chief Executive Officer



# John A. Coleman School

To Whom It May Concern:


The John A. Coleman School is aware that an application for approval to establish the St. Elizabeth Seton Children's Foundation (the "Foundation") that will solicit funds for the benefit of the John A. Coleman School will be submitted to the Public Health and Health Planning Council. The John A. Coleman School will accept funds raised by the Foundation.

By:   
Patricia A. Tursi  
President



To Whom It May Concern:

The Children's Rehabilitation Center is aware that an application for approval to establish the St. Elizabeth Seton Children's Foundation (the "Foundation") that will solicit funds for the benefit of the Children's Rehabilitation Center will be submitted to the Public Health and Health Planning Council. The Children's Rehabilitation Center will accept funds raised by the Foundation.

By:   
Patricia A. Tursi  
Chief Executive Officer



## **INFORMATION ABOUT INITIAL DIRECTORS**

**Application to Establish St. Elizabeth Seton Children's Foundation  
Information about Initial Director**

Name: Carol A. Barnes, SC

Address: 20 Washington Square North  
Street  
New York NY 10011  
City State Zip Code

Current Occupation: Sister of Charity

Current Employer: Sisters of Charity of New York

Address: 6301 Riverdale Avenue  
Street  
Bronx NY 10471  
City State Zip Code

**Employment Over the Past Ten Years**

1. Name of Employer: Sisters of Charity

Address: 6301 Riverdale Avenue  
Street  
Bronx NY 10471  
City State Zip Code

Dates of Employment: 1956 Present  
From To

Position Held: Member

2. Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_  
Street  
\_\_\_\_\_  
City State Zip Code

Dates of Employment: \_\_\_\_\_  
From To

Position Held: \_\_\_\_\_

3. Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_  
Street

\_\_\_\_\_                      \_\_\_\_\_                      \_\_\_\_\_  
City                                      State                                      Zip Code

Dates of Employment: \_\_\_\_\_                      \_\_\_\_\_  
From                                      To

Position Held: \_\_\_\_\_

Any additional employment positions listed on pages attached.

**Affiliations with Non-Profit Organizations Currently or Over Past Ten Years  
List of Director or Officer Position(s) (Excluding employment positions  
listed above)**

1. Name of Organization: St. Vincent's Catholic Medical Centers

Address: W. 12<sup>th</sup> Street  
Street

New York                      NY                      10011  
City                                      State                                      Zip Code

Dates of Affiliation: 1986                      2012 (June)  
From                                      To

Position Held: Board Member; Secretary

2. Name of Organization: New York Foundling

Address: 590 Avenue of the Americas  
Street

New York                      NY                      10011  
City                                      State                                      Zip Code

Dates of Affiliation: 1987                      Present  
From                                      To

Position Held: Board Member; Secretary

3. Name of Organization: Elizabeth Seton Pediatric Center

Address: 300 Corporate Blvd. South  
Street

Yonkers NY 10701  
City State Zip Code

Dates of Affiliation: 1988 Present  
From To

Position Held: Board Member

4. Name of Organization: John A. Coleman School

Address: 300 Corporate Blvd. South  
Street

Yonkers NY 10701  
City State Zip Code

Dates of Affiliation: 2005 Present  
From To

Position Held: Secretary / Treasurer

5. Name of Organization: Children's Rehabilitation Center

Address: 317 North Street  
Street

White Plains NY 10605  
City State Zip Code

Dates of Affiliation: 2010 Present  
From To

Position Held: Board Member; Chairperson

Any additional affiliations listed on pages attached.

**Application to Establish St. Elizabeth Seton Children's Foundation  
Information about Initial Director**

Name: Thomas M. Feuerstein

Address: 5 Cliffview Court  
Street  
Princeton Junction NJ 08550  
City State Zip Code

Current Occupation: Finance

Current Employer: NYU Hospitals Center

Address: 550 1<sup>st</sup> Avenue  
Street  
New York NY 10016  
City State Zip Code

**Employment Over the Past Ten Years**

1. Name of Employer: NYU Hospitals Center

Address: 550 1<sup>st</sup> Avenue  
Street  
New York NY 10016  
City State Zip Code

Dates of Employment: 11/2003 Current  
From To

Position Held: V.P. Finance

2. Name of Employer: Deloitte & Touche

Address: 2 World Financial Center  
Street  
New York NY 10281  
City State Zip Code

Dates of Employment: 9/2001 11/2003  
From To

Position Held: Director

3. Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_

Street

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dates of Employment: \_\_\_\_\_

From

To

Position Held: \_\_\_\_\_

Any additional employment positions listed on pages attached.

**Affiliations with Non-Profit Organizations Currently or Over Past Ten Years  
List of Director or Officer Position(s) (Excluding employment positions  
listed above)**

1. Name of Organization: John A. Coleman School

Address: 300 Corporate Blvd. South

Street

Yonkers

NY

10701

City

State

Zip Code

Dates of Affiliation: 6/2005

From

Present

To

Position Held: Chairperson

2. Name of Organization: Elizabeth Seton Pediatric Center

Address: 300 Corporate Blvd. South

Street

Yonkers

NY

10701

City

State

Zip Code

Dates of Affiliation: 6/2005

From

6/2006

To

Position Held: Trustee

**Application to Establish St. Elizabeth Seton Children's Foundation  
Information about Initial Director**

Name: Peter T. McKeever

Address: 271 West Hills Road  
Street

New Canaan CT 06840  
City State Zip Code

Current Occupation: CFO

Current Employer: Knowledgent Group Inc.

Address: 1177 Avenue of Americas  
Street

New York NY 10036  
City State Zip Code

**Employment Over the Past Ten Years**

1. Name of Employer: EMC Corp

Address: 176 South Street  
Street

Hopkinton MA 01748  
City State Zip Code

Dates of Employment: 9/1/07 10/15/09  
From To

Position Held: Sr. Director of Finance

2. Name of Employer: BusinessEdge Solutions Inc.

Address: One Tower Center Blvd  
Street

East Brunswick NJ 08816  
City State Zip Code

Dates of Employment: 5/1/2000 8/31/2007  
From To

Position Held: CFO

3. Name of Employer: \_\_\_\_\_

Address: \_\_\_\_\_

Street

\_\_\_\_\_

City

\_\_\_\_\_

State

\_\_\_\_\_

Zip Code

Dates of Employment: \_\_\_\_\_

From

To

Position Held: \_\_\_\_\_

Any additional employment positions listed on pages attached.

**Affiliations with Non-Profit Organizations Currently or Over Past Ten Years  
List of Director or Officer Position(s) (Excluding employment positions  
listed above)**

1. Name of Organization: Elizabeth Seton Pediatric Center

Address: 300 Corporate Blvd. South

Street

Yonkers

City

NY

State

10701

Zip Code

Dates of Affiliation: 7/1/99

From

Present

To

Position Held: Director

2. Name of Organization: John A. Coleman School

Address: 300 Corporate Blvd. South

Street

Yonkers

City

NY

State

10701

Zip Code

Dates of Affiliation: 2005

From

2010

To

Position Held: Vice Chairperson



## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Restated Certificate of Incorporation of St. Elizabeth Seton Children's Foundation dated October 4, 2012.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**M E M O R A N D U M**

**TO:** Public Health and Health Planning Council  
**FROM:** James Dering, General Counsel *JD*  
**DATE:** November 8, 2012  
**SUBJECT:** Proposed Restated Certificate of Incorporation of  
Asian & Pacific Islander Coalition on HIV/AIDS, Inc.

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Attached is the proposed Restated Certificate of Incorporation of Asian & Pacific Islander Coalition on HIV/AIDS, Inc., a not-for-profit diagnostic and treatment center licensed under Article 28 of the Public Health Law. This not-for-profit corporation seeks Public Health and Health Planning Council approval to change its name to "APICHA Community Health Center." 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 October 23, 2012 from Helen Pfister, attorney for the corporation. As explained in that letter, the name change is intended to ensure that the facility is more closely aligned with its mission and scope of services, which include the provision of health care services and community advocacy in addition to HIV/AIDS services.

The Department has no objection to the proposed name change, and the proposed Restated Certificate of Incorporation of Asian & Pacific Islander Coalition on HIV/AIDS, Inc. is in legally acceptable form.

Attachments

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**ASIAN & PACIFIC ISLANDER COALITION ON HIV/AIDS, INC.**

Under Section 805 of the New York Not-for-Profit Corporation Law

.....

I, the undersigned, being the Chief Executive Officer of the Asian & Pacific Islander Coalition on HIV/AIDS, Inc. (hereinafter the "Corporation") do hereby certify that:

1. The name of the Corporation is Asian & Pacific Islander Coalition on HIV/AIDS, Inc.
2. The initial Certificate of Incorporation of the Corporation was filed at the New York State Department of State on December 29, 1992, and was amended by Certificate of Change filed at the Department of State on June 23, 2011, and was further amended by Certificate of Amendment filed at the Department of State on June 21, 2012, and was further amended by Certificate of Change filed at the Department of State on August 9, 2012.
3. The Corporation's Certificate of Incorporation is amended to effect the following amendments authorized by the New York Not-For-Profit Corporation Law (the "N-PCL"):

a. Article FIRST setting forth the name of the Corporation is amended to read in its entirety as follows:

**FIRST:** The name of the corporation is APICHA Community Health Center (the "Corporation").

b. Article ELEVENTH designating the post office address to which the Secretary of State shall mail a copy of any process against the Corporation is hereby amended to read in its entirety as follows:

**ELEVENTH:** The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him is:

APICHA Community Health Center  
400 Broadway  
New York, NY 10013

4. The text of the certificate of incorporation is hereby restated as amended to read as herein set forth in full:

**FIRST:** The name of the corporation is APICHA Community Health Center (the "Corporation").

**SECOND:** The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a Type B Corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Third below.

**THIRD:** (a) The Corporation is formed for the purposes of providing HIV/AIDS-related information, including prevention information to individuals and organizations; assisting and supporting individuals in connection with their applications in the community at large (and particularly to individuals in the Asian and Pacific Islander Community) to receive benefits from health and human services agencies; establishing a diagnostic and treatment center to provide health care and related services to expand health care access for all individuals; and conducting all lawful activities which may be useful in accomplishing the foregoing purposes; (provided, however, that the corporation shall not practice law, medicine, or any other profession) and

(b) Nothing herein shall authorize the Corporation to operate a secondary school or an institution of higher learning, or otherwise to engage in any activities that would require the approval of the State of New York or approval as required by Section 404(b) through (v) of the Not-for-Profit Corporation Law, except to the extent such approvals have been obtained.

**FOURTH:** In furtherance, but not in limitation, of the purposes set forth in Article Third above, the Corporation shall have the following power and authority:

(a) to solicit grants and contributions by private or public appeal, by advertisement or by other lawful means for the purposes set forth in Article Third above;

(b) to receive and administer money, securities negotiable instruments, real estate and other property of every kind and description, and rights and services of every kind and description, received by grant, contribution, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, securities, negotiable instruments, real estate and other property of every kind and description, and rights and services of every kind and description, and to own, hold, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, grant a security interest in or otherwise dispose of or deal with any

and all such money, securities, negotiable instruments, real estate and other property, and any and all such rights and services, acquired for the purposes set forth in Article Third above;

(c) to enter into such contracts and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the By-laws of the Corporation;

(d) to have all the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth elsewhere in the Not-for-Profit Corporation Law.

**FIFTH:** Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for one or more of the purposes specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) or by a corporation, the contributions, transfers, or gifts to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code. All references in this Certificate of Incorporation to sections of the Code shall be to corresponding provisions of subsequent United States internal revenue laws.

**SIXTH:** The Corporation is not formed for pecuniary profit or for financial gain, and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes.

**SEVENTH:** No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate or intervene (including by publication or distribution of statements) in any political campaign on behalf (or in opposition to) any candidate for public office.

**EIGHTH:** For those periods, if any, during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(a) the Corporation shall distribute its income for such period, at such time and in such manner as not to subject it to tax under Section 4942 of the Code;

(b) the Corporation shall not engage in any act of self-dealing that is subject to tax under Section 4941(d) of the Code;

(c) the Corporation shall not retain any excess business holdings that are subject to tax under Section 4943(c) of the Code;

(d) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(e) the Corporation shall not make any taxable expenditures that are subject to tax under Section 4945(d) of the Code.

**NINTH:** The office of the Corporation shall be located in the County of New York, State of New York.

**TENTH:** The Corporation shall have no members. The number of directors of the Corporation shall be as specified in the By-Laws of the Corporation but in no event shall there be fewer than three (3) directors. The names and addresses of the persons constituting the initial Board of Directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Joey Almoradie	131 E. 23rd Street, #8C New York, New York 10010-4513
Haruko Brown	147-11A Roosevelt Avenue Flushing, New York 11354
John Chin	596 7th Street, #1 Brooklyn, New York 11215
Glenn Izutsu	42-42 Ithaca Street, #2J Elmhurst, New York 11373
Margaret Donghyang Lukoff	750 Columbus Avenue, #14 New York, New York 10025
Martin Manalansan	316 W. 19th Street, #GE New York, New York 10011
Gene Nakajima	155 E. 29th Street, #19H New York, New York 10016
Tami Ogata	65 W. 90th Street New York, New York 10024
Douglas Paul	509 East 77th Street, #6A

New York, New York 10021

Suki Terada Ports

440 Riverside Drive, #92  
New York, New York 10027

Randall Wilson

334 W. 20th Street  
New York, New York 10011-3302

Darryl Wong

140-21 31st Road, #4F  
Flushing, New York 11354

(b) The Corporation shall indemnify its directors and officers to the full extent permitted by Article 7 of the Not-for-Profit Corporation Law.


**ELEVENTH:** The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him is:

APICHA Community Health Center  
400 Broadway  
New York, NY 10013

**TWELFTH:** In the event of dissolution, the assets and property of the Corporation remaining after payment of its expenses and satisfaction of its liabilities shall be distributed as determined by the Board of Directors of the Corporation, subject to the approval of a Justice of the Supreme Court of the State of New York if such approval is then required by law, but only to such organizations as shall at the time qualify as exempt organizations under Section 501(c)(3) of the Code.

5. This restatement of the Corporation's Certificate of Incorporation was authorized by the affirmative vote of a majority of the board of directors of the Corporation at a duly held and constituted meeting of its board of directors on October 9, 2012.

IN WITNESS WHEREOF, this certificate has been subscribed this 9th day of October, 2012 by the undersigned who affirm that the statements made are true under the penalties of perjury.

  
Name: Teresita Rodriguez  
Chief Executive Officer

**RESOLUTIONS OF THE BOARD OF DIRECTORS OF ASIAN & PACIFIC ISLANDER  
COALITION ON HIV/AIDS, INC.**

At a meeting of the Board of Directors held on  
this 9th day of October 2012

The following resolutions were duly adopted by the Board of Directors of Asian & Pacific Islander Coalition on HIV/AIDS, Inc., a New York not-for-profit corporation (the "Corporation") at a duly called and constituted meeting of the Board of Directors held on October 9, 2012, a quorum being present at all times during the meeting.

**WHEREAS**, the Board of Directors has determined that it is in the best interests of the Corporation to change its legal name from "Asian & Pacific Islander Coalition on HIV/AIDS, Inc." to "APICHA Community Health Center"; and

**WHEREAS**, as a New York not-for-profit corporation, the Corporation must amend its Certificate of Incorporation to change its legal name;

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Restated Certificate of Incorporation of the Corporation (the "Certificate"), attached hereto as Exhibit A, be and it hereby is approved and adopted; and be it further

**RESOLVED**, that the Chief Executive Officer and each of the officers of the Corporation be, and each of them hereby is, authorized and directed to execute and file the Certificate on behalf of the Corporation; and be it further;

**RESOLVED**, that prior to filing the Certificate, the Chief Executive Officer and the officers of the Corporation shall ensure that all necessary consents and approvals to the name change are properly obtained and affixed to the Certificate; and be it further

**RESOLVED**, that the Chief Executive Officer and the officers of the Corporation be, and each of them hereby is, authorized and directed to take any and all further action and to execute, delivery and file any and all instruments and documents, in the name and on behalf of the Corporation, and to pay and any all fees and expenses, as in his or her judgment may be necessary, proper or advisable in order to carry out the intent and purposes of the foregoing resolutions.

**Certification of Secretary**

The undersigned, as Secretary of the Corporation, hereby certifies that the foregoing is a true and accurate copy of the resolutions passed by the Directors of the Corporation at a meeting duly held on October 9, 2012.

Dated: October 9 2012

Name:   
Title: Secretary



**manatt**  
manatt | phelps | phillips

Heleen R. Pfister  
Manatt, Phelps & Phillips, LLP  
Direct Dial: (212) 830-7277  
E-mail: hpfister@manatt.com

October 23, 2012

**COPY**

**BY FEDERAL EXPRESS**

Ms. Colleen Frost  
Executive Secretary, Public Health and Health Planning Council  
New York State Department of Health  
Health Facility Planning  
Hedley Building, 6th Floor  
433 River Street  
Troy, New York 12180

**RECEIVED**

OCT 25 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

**Re: Request for Approval of Name Change for Asian & Pacific Islander  
Coalition on HIV/AIDS, Inc. (Op. Cert. No. 7002173R)**

Dear Ms. Frost:

Pursuant to 10 N.Y.C.R.R. § 600.11(1), enclosed at Exhibit A for the approval of the Public Health and Health Planning Council please find a copy of a Restated Certificate of Incorporation that would change the official name of Asian & Pacific Islander Coalition on HIV/AIDS, Inc. (the "Corporation") to "APICHA Community Health Center." Also enclosed at Exhibit B, as per your request, please find a copy of the Corporation's initial Certificate of Incorporation, filed with the New York State Department of State on December 29, 2012. As the Restated Certificate of Incorporation indicates, the initial Certificate of Incorporation of the Corporation was filed at the Department of State on December 29, 1992, and was amended by Certificate of Change filed at the Department of State on June 23, 2011, and was further amended by Certificate of Amendment filed at the Department of State on June 21, 2012, and was further amended by Certificate of Change filed at the Department of State on August 9, 2012.

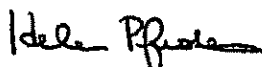
Asian & Pacific Islander Coalition on HIV/AIDS, Inc. is a not-for-profit diagnostic and treatment center licensed under Article 28 of the New York Public Health Law. It currently does business under the assumed name, "APICHA Community Health Center" and is seeking to change its formal name in order to ensure that it is more closely aligned with its mission and scope of services, which include the provision of health care services in addition to HIV/AIDS and other advocacy services to the community. A copy of the Corporation's Certificate of Assumed Name, which was filed with the Department of State on February 10, 2012, is enclosed at Exhibit C.

**manatt**  
manatt | phelps | phillips

Ms. Colleen Frost  
October 23, 2012  
Page 2

If you have any questions concerning this submission, please do not hesitate to contact me at 212-830-7277. I look forward to your response.

Sincerely,



Helen R. Pfister

Enclosures

cc: Mary Callahan, Director, Bureau of House Counsel, New York State Department of Health

200764840.1

## RESOLUTION


RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Restated Certificate of Incorporation of Asian & Pacific islander Coalition on HIV/AIDS, Inc., dated October 9, 2012.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:**  James E. Dering, General Counsel

**DATE:** September 28, 2012

**SUBJECT:** Proposed Dissolution of The Childbirth Connection Foundation, Inc.

---

The Childbirth Connection Foundation, Inc. requests Public Health and Health Planning Council approval of its proposed Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

The Childbirth Connection Foundation was formed in 1988 for the purpose of promoting the development and improvement of high quality health care services given to families before, during and after childbirth and, in this regard, to operate solely for the benefit of Childbirth Connection (formerly known as Maternity Center Association) and other similar organizations. The foundation seeks dissolution after a determination by its board of directors that continued operation of The Childbirth Connection Foundation was unnecessary and inefficient. Pursuant to The Childbirth Connection Foundation's Plan of Dissolution, if approved by the Attorney General, the foundation's remaining assets will be distributed to the Childbirth Connection.

Attached are copies of the proposed Certificate of Dissolution, a letter from The Childbirth Connection Foundation's attorney explaining the need for the proposed Dissolution, a proposed Certificate of Dissolution and a proposed Verified Petition seeking judicial approval of The Childbirth Connection Foundation's Plan of Dissolution and distribution of assets.

The Certificate of Dissolution is in legally acceptable form.

Attachments

# PHILLIPS NIZER<sup>LLP</sup>

666 Fifth Avenue  
New York, NY 10103-0084  
212.977.9700  
Fax 212.262.5152

600 Old Country Road  
Garden City, NY 11530-2011  
516.229.9400  
Fax 516.228.9612

Court Plaza North  
25 Main Street  
Hackensack, NJ 07601-7015  
201.487.3700  
Fax 201.646.1764

[www.phillipsnizer.com](http://www.phillipsnizer.com)

*AuthorClosingName*

**Robert L. Bachner**  
212.841.0706  
[rbachner@phillipsnizer.com](mailto:rbachner@phillipsnizer.com)

July 9, 2012

## VIA FEDERAL EXPRESS

Ms. Coleen Frost, Executive Secretary  
Public Health and Health Planning Council  
Corning Towner, Room 1805  
Empire State Plaza  
Albany, New York 12237

Re: The Childbirth Connection Foundation

Dear Ms. Frost:

This Foundation is a New York not-for-profit corporation. It has functioned as a feeder organization for Childbirth Connection, an operating 501(C)(3) organization, which at one time provided clinical services that put it at risk for possible malpractice claims. Theoretical liability continued even after Childbirth Connection ceased engaging in such activities and focused on educational and informational services, since claimants who might have been injured at birth would not be barred from asserting their claim by the statute of limitations until an appropriate period after their majority has attained. Since that period has expired, there is no longer a valid purpose in maintaining separate organizations with additional expenses and it is desired to dissolve the Foundation and pay over its assets to Childbirth Connection. The savings and greater efficiency achieved would benefit the public, and there appears to be no detriment resulting from the completion of that procedure.

We enclose the following:

---

**Circular 230 Disclosure: Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.**

1179552.1

July 9, 2012  
Page 2

1. Formation documents.
2. Statement of assets of the Foundation as of June 30, 2012. We are advised that the Foundation has no liabilities.
3. Unanimous consent of the Board of Directors of the Foundation adopting the Plan of Dissolution.
4. A proposed petition to the Supreme Court of the State of New York for consent to the dissolution, which will be subject to obtaining consent of the Attorney General of the State of New York as well as the Public Health and Health Planning Council.

We would greatly appreciate the within application for consent being placed upon the agenda of the Council as soon as it practicable. We would be happy to furnish any further information that might be required in this connection. May I impose upon you to request that you acknowledge receipt of this application upon the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Very truly yours,

PHILLIPS NIZER LLP

By: 

Robert L. Bachner

RLB:fs  
Enclosures

Cc: Gregory Diego

RECEIVED:

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

By: \_\_\_\_\_

**CERTIFICATE OF DISSOLUTION**

**OF**

**THE CHILDBIRTH CONNECTION FOUNDATION  
(Under Section 1003 of the Not-for-Profit Corporation Law)**

**It is hereby certified that:**

**FIRST:** The name of the corporation is The Childbirth Connection Foundation (the "Corporation") and was originally formed under the name The MCA Foundation, Inc..

**SECOND:** The certificate of incorporation of the Corporation was filed by the New York Department of State on December 12, 1988. A Certificate of Amendment to change the name was filed on May 25, 2007.

**THIRD:** The names and the addresses of the officers and directors of the corporation are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Maureen Tomkins, President and Treasurer	281 Park Avenue, 5 <sup>th</sup> Floor New York, NY 10010
Walter Delafield, Vice President	281 Park Avenue, 5 <sup>th</sup> Floor New York, NY 10010
Philip Farely, Secretary	281 Park Avenue, 5 <sup>th</sup> Floor New York, NY 10010
Maureen Corry, Assistant Secretary	281 Park Avenue, 5 <sup>th</sup> Floor New York, NY 10010
Sean Lenahan, Director	281 Park Avenue, 5 <sup>th</sup> Floor New York, NY 10010
Donna Lynne, Director	281 Park Avenue, 5 <sup>th</sup> Floor New York, NY 10010
Kathleen Walsh, Director	281 Park Avenue, 5 <sup>th</sup> Floor New York, NY 10010

Pat Troy, Director

281 Park Avenue, 5<sup>th</sup> Floor  
New York, NY 10010

**FOURTH:** At the time of dissolution the Corporation is a Type B corporation.

**FIFTH:** At the time of authorization of the Corporation's Plan of Dissolution and Distribution of Assets pursuant to N-PCL Section 1002, the Corporation held assets legally required to be used for a particular purpose.

**SIXTH:** The Corporation elects to dissolve.



**SEVENTH:** The dissolution of the Corporation was authorized by the adoption of a Plan of Dissolution and Distribution of Assets unanimously approved by written consent of the board of directors of the Corporation on May 6, 2011. The Corporation has no members.

**NINTH:** Approval of the dissolution of the Corporation is required to be obtained from the following government agency, whose approval is attached:

Public Health Council of the State of New York

**TENTH:** The Corporation has carried out the Plan of Dissolution and Distribution of Assets.

**ELEVENTH:** Prior to the filing of this Certificate of Dissolution with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of The Childbirth Connection Foundation this \_\_\_ day of \_\_\_\_\_, 2011.

---

Maureen Tompkins, President

**CERTIFICATE OF DISSOLUTION**  
**OF**  
**THE CHILDBIRTH CONNECTION FOUNDATION**  
**Pursuant to Section 1003 of the Not-for-Profit Corporation Law**

Filed by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
In the Matter of the Application :

Of : VERIFIED PETITION

The Childbirth Connection  
Foundation

Index No.

For Approval of Plan of  
Dissolution and Distribution of  
Assets pursuant to Section 1002 of  
the Not-for-Profit Corporation Law

----- X

TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Petitioner, The Childbirth Connection Foundation by Maureen Tompkins, President of the corporation, for its Verified Petition herein respectfully alleges:

1. The Childbirth Connection Foundation, whose principal address is 260 Madison Avenue South, 8th Floor, New York, NY 10016, was incorporated pursuant to New York's Not-for-Profit Corporation Law on December 12, 1988. A copy of the Certificate of Incorporation and all amendments are attached.

2. The names and addresses of the directors and officers of Petitioner, and the offices they hold, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Maureen Tompkins, President and Treasurer	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016
Walter Delafield, Vice President	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016
Philip Farley, Secretary	260 Madison Avenue, 8 <sup>th</sup>

Floor  
New York, NY 10016

<u>NAME</u>	<u>ADDRESS</u>
Maureen Corry, Assistant Secretary	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016
Sean Lenahan, Director	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016
Donna Lynne, Director	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016
Kathleen Walsh, Director	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016
Pat Troy, Ex-Officio	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016
Deanne Williams	260 Madison Avenue, 8 <sup>th</sup> Floor New York, NY 10016

3. The purposes of Petitioner are:

To promote the development and improvement of high quality health care services given to families before, during and after childbirth by undertaking, without limitation, to:

(a) provide technical, administrative, consulting and other support services and assistance to persons, groups and organizations having among their purposes the provision of health services to, the improvement or maintenance of the health of, and/or the provision of educational, informational or training services regarding families before, during and after childbirth;

(b) encourage, foster and support education in the field of perinatal health care, nursing, nurse-midwifery, parenting and related activities;

(c) encourage, foster, support, participate in, conduct and supervise projects and activities that promote the planning and coordination of perinatal health care service delivery;

(d) collect, analyze and, where appropriate, publically disseminate demographic, programmatic, and financial data respecting the availability, utilization, and effectiveness of perinatal health care services;

(e) solicit, accept and receive moneys, legacies, gifts, grants, contributions, endowments and property of any kind, real or personal, tangible or intangible, or any undivided interest therein, without limitation as to amount or value, and to hold, invest, reinvest, manage and otherwise dispose of same and the income therefrom and, except to the extent that there shall be directions to the contrary contained in instruments vesting assets in the corporation, to pay over therefrom, in accordance with the Certificate of Incorporation and the Bylaws of the corporation, the principal income therefrom, or any portion thereof, to any hospital, health care related charitable organization, birthing center, educational institute or other charitable institute which is an organization, other than a private foundation, which is described in Section 501(c)(3), and Section 509(a)(1), 509(a)(2) or 509(a)(3), of the Internal Revenue Code of 1954, as amended;

(f) operate solely for the benefit of Maternity Center Association and other entities within the class of organizations described in Article THIRD, Section (e); and

(g) engage in any other activity designed to promote the purposes of the Corporation, which may be lawfully undertaken by the corporation under Not-for-Profit Corporation Law.

4. Petitioner is a Type "B" corporation.

5. The assets of the corporation and their fair market value are listed on the portfolio attached hereto as Annex 1.

6. The corporation has no liabilities.

7. The dissolution of the corporation is contemplated and the assets of the corporation are to be distributed in accordance with the Plan of Dissolution and Distribution of Assets.

8. A unanimous written consent of all members of the board of directors of the corporation was signed on May 6, 2011,

adopting the Plan of Dissolution and Distribution of Assets and authorizing the filing of a certificate of dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. Said written consent and plan have not been amended, modified or revoked and are in full force and effect on the date hereof. A certified copy of the Plan of Dissolution and a copy the resolution of the Board of Directors adopting such plan, are attached as Exhibit A.

9. The corporation does not have members.

10. Petitioner submits with this Petition the original certificate of dissolution for endorsement thereon by a Justice of the Supreme Court of an order for approval of the certificate pursuant to N-PCL §1003. A copy of the proposed certificate of dissolution is attached.

10. The approval of the Public Health Council of the State of New York is required in connection with the certificate of dissolution and such approval is attached as Exhibit B.

11. No previous application has been made for the relief requested in this application.

WHEREFORE, Petitioner requests that the Court grant an Order Approving the Plan of Dissolution of Assets of The Childbirth Connection Foundation, a not-for-profit corporation pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREOF, the corporation has caused this petition to be executed this 6 day of May, 2011 by

THE CHILDBIRTH CONNECTION  
FOUNDATION

By: Maureen Tompkins  
Maureen Tompkins, President

VERIFICATION

STATE OF NEW YORK    )  
                                  )    SS.:  
COUNTY OF NEW YORK )

Maureen Tompkins, being duly sworn, deposes and says:

I am the President of The Childbirth Connection Foundation, the corporation named in the above Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.

Maureen Tompkins  
Maureen Tompkins

Sworn to before me this  
6<sup>th</sup> day of May, 2011

Jeff Schweon  
Notary Public

**JEFF SCHWEON**  
Notary Public, State of New York  
No. 02SC6195974  
Qualified in New York County  
Commission Expires Dec. 15, 2012

**Plan of Dissolution and Distribution of Assets  
of The Childbirth Connection Foundation,  
a New York Not-for-Profit Corporation**

The Board of Directors of The Childbirth Connection Foundation. (the "Corporation"), at a special meeting duly convened on the 6th day of May, 2011 , pursuant to notice given in accordance with law, a quorum being present at all times, having considered the advisability of voluntarily dissolving the Corporation, and it being the majority opinion of the Board that dissolution is advisable and it is in the best interests of the corporation to effect such a dissolution, and the Board having adopted, by a unanimous vote, a plan for a voluntary dissolution of the Corporation, does hereby resolve that the Corporation be dissolved in accordance with the following plan:

**Procedure for Dissolution**

1. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the Corporation is required to be obtained from the following government agencies and officers, whose approvals are attached:

New York Department of Taxation and Finance  
Public Health Council of the State of New York

3. The Corporation has assets as set forth in the Investment Portfolio attached hereto as Exhibit A.
4. The assets owned by the Corporation shall be distributed to the following organization which qualifies as an exempt organization pursuant to Section 501(c)(3) and Section 509(a)(1), (2) or (3) of the Internal Revenue Code of 1954, as amended:

Childbirth Connection

5. The Corporation has no liabilities.
6. Within ten (10) days after the adoption of the Plan of Dissolution, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PCL § 1002(d).
7. The Corporation shall, within two hundred seventy days of filing of the Plan of Dissolution of the Corporation, carry out the plan and pay its liabilities. Otherwise, the Corporation shall carry out the plan and pay its liabilities as soon as reasonably practicable as may be solely determined by the President and/or Treasurer.



8. A Certificate of Dissolution shall be executed and all approvals as may be required under Section 1002 of the Not-for-Profit Corporation Law including the consent to the dissolution of the Corporation from the New York Department of Taxation and Finance shall be attached thereto.


## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Certificate of Dissolution of The Childbirth Connection Foundation, Inc., dated as attached.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council  
**FROM:**  James E. Dering, General Counsel  
**DATE:** September 12, 2012  
**SUBJECT:** Proposed Dissolution of Pinnacle Healthcare, Inc.

---

Pinnacle Healthcare, Inc. ("Pinnacle") requests Public Health and Health Planning Council ("PHHPC") approval of its proposed Plan of Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1001-1003 and 10 NYCRR Part 650.

Pinnacle was formed as a New York not-for-profit corporation in 1997. In 1999, Pinnacle was established as an active parent of (1) Riverside Health Care System, Inc. ("RHCS"), (2) Sound Shore Health System, Inc. ("SSHS"), and (3) Westchester Putnam Health Management System, Inc. ("WPHMS"). In 2011, Pinnacle was disestablished as active parent of RHCS through the Certificate of Need process. Pinnacle now seeks dissolution because the organizations that Pinnacle was formed to support (above-mentioned affiliates) determined that it was no longer cost-effective for Pinnacle to continue operations. Pursuant to Pinnacle's proposed dissolution plan, the remaining assets, after payment of liabilities, will be distributed to SSHS and WPHMS.

Pinnacle is seeking approval of its Plan of Dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002. Because Pinnacle has assets in excess of \$25,000, § 1002 requires that a Justice of the Supreme Court approve Pinnacle's Plan of Dissolution. Under this section, application to the Supreme Court must include certified copies of documents evincing PHHPC's consent to the Plan of Dissolution. Once PHHPC approves Pinnacle's Plan of Dissolution, Pinnacle will carry out the Plan and wind up its affairs pursuant to Not-For-Profit Corporation Law § 1002-a. After the Plan has been carried out, Pinnacle will seek PHHPC approval of its Certificate of Dissolution while its affiliates contemporaneously submit Certificate of Need applications to disestablish their active parent relationship with Pinnacle.

Attached are the following documents: (1) a copy of the proposed Certificate of Dissolution (approval of which is not being sought by this request); (2) a copy of the proposed verified petition seeking Supreme Court approval of the proposed Plan of Dissolution; (3) a certified copy of the proposed Plan of Dissolution; and (4) memoranda from Pinnacle's attorneys stating the public need for dissolution and stating the reasons why Pinnacle is seeking PHHPC approval of the Plan of Dissolution.

The Office of Counsel has no legal objections to the PHHPC's approval of Pinnacle's proposed Plan of Dissolution.

# NIXON PEABODY LLP

1300 Clinton Square  
Rochester, New York 14604-1792  
(585) 263-1000  
Fax: (585) 263-1600  
Direct Dial: (585) 263-1164  
E-Mail: [apelletier@nixonpeabody.com](mailto:apelletier@nixonpeabody.com)

August 13, 2012

**VIA FEDERAL EXPRESS**

Thomas King, Esq.  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Floor 24  
Albany, NY 12237-0031

RE: Pinnacle Healthcare, Inc.  
Dissolution

RECEIVED

AUG 14 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Dear Mr. King:

We are writing to respectfully request the approval of the Plan of Dissolution for Pinnacle Healthcare, Inc. (the "Corporation") by the Public Health and Health Planning Council ("PHHPC").

The Corporation is seeking dissolution because the organizations it was formed to support -- Sound Shore Health System, Inc., and Westchester Putnam Health Management System, Inc. -- determined that it was no longer cost effective for the Corporation to continue operations.

Consistent with the Corporation's purposes as well as the dissolution clause in its Certificate of Incorporation, the Corporation's Board of Directors determined that it was just and proper to distribute any remaining assets after payment of liabilities to Sound Shore Health System, Inc. and Westchester Putnam Health Management System, Inc.

In response to your remaining questions, we provide the following materials in support of the Corporation's application for approval of its Plan of Dissolution:

1. copy of Verified Petition, including Plan of Dissolution; and
2. proposed Certificate of Dissolution of the Corporation;

Thank you for your time and attention to this matter. Should you require any additional information please do not hesitate to contact me.

Very truly yours,



Anita L. Pelletier

AP/Irr  
Enclosures

14101278.1

# NIXON PEABODY<sub>LLP</sub>

1300 Clinton Square  
Rochester, New York 14604-1792  
(585) 263-1000  
Fax: (585) 263-1600  
Direct Dial: (585) 263-1164  
E-Mail: [apelletier@nixonpeabody.com](mailto:apelletier@nixonpeabody.com)

April 20, 2012

Michelle Petruzelli, Senior Attorney  
Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Room 2464  
Empire State Plaza  
Albany, NY 12237

RECEIVED

APR 23 2012

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

RE: Pinnacle Healthcare, Inc.  
Plan of Dissolution

Dear Ms. Petruzelli:

We are writing to respectfully request the approval of the enclosed Plan of Dissolution for Pinnacle Healthcare, Inc. (the "Corporation") by the Public Health and Health Planning Council ("PHHPC").

In connection with our previous conversations and correspondence, our firm submitted a request to PHHPC for approval of a Certificate of Dissolution of the Corporation. The request was subsequently forwarded to your office for review and preparation prior to PHHPC approval. A copy of the Certificate of Dissolution is included for your reference.

Upon review by your office it was determined that the Corporation was the active parent of (1) Riverside Health Care System, Inc. ("RHCS"), (2) Sound Shore Health System, Inc. ("SSHS"), and (3) Westchester Putnam Health Management System, Inc. ("WPHMS") pursuant to a certificate of need (CON) application number 982511. In 2011, the Corporation was disestablished as parent of RHCS under CON application number 111388. The Corporation acknowledges that it continues to serve as active parent of SSHS and WPHMS and understands that PHHPC will not consent to the dissolution Corporation and/or filing of a Certificate of Dissolution until the Corporation has been disestablished as parent of SSHS and WPHMS.

At this time, the Corporation is seeking approval of its Plan of Dissolution by PHHPC. We recognize that approval of the Plan deviates from PHHPC's regular review and approval process for dissolving entities, however, in order for the Corporation to begin winding up its affairs under the Plan of Dissolution the Corporation must also receive approval from the New

Michelle Petruzelli,  
Division of Legal Affairs  
April 20, 2012  
Page 2

York State Attorney General's office, which approval will not be granted until PHHPC has given its consent to the same.

Upon approval by PHHPC and the Attorney General's office, the Corporation will begin winding up its affairs, which will include proceeding with the Department's CON process seeking approval by PHHPC to disestablish itself as active parent of SSHS and WPHMS, to dissolve the Corporation and to file a Certificate of Dissolution.

Thank you for your time and consideration on this matter. Should you require any additional information please do not hesitate to contact our offices.

Very truly yours,



Anita L. Pelletier

AP/lrr  
Enclosures

**CERTIFICATE OF DISSOLUTION**

**OF**

**PINNACLE HEALTHCARE, INC.**

**Under Section 1003 of the Not-for-Profit Corporation Law**

THE UNDERSIGNED, being the Executive Director of the Board of Directors of Pinnacle Healthcare, Inc. (the "Corporation"), does hereby certify:

1. The name of this Corporation is the Pinnacle Healthcare, Inc.
2. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of New York on November 6, 1997. The Corporation was formed under the name Pinnacle Healthcare, Inc.
3. The names and addresses of the directors and officers of the Corporation are as follows:

<u>Name/Address</u>	<u>Title</u>
Edward B. MacDonald 125 Canopus Hollow Road Putnam Valley, NY 10579	Chairman
Philip Ambrosino 13 Waterside Close Eastchester, NY 10709	Secretary
John A. McGurty, Jr., MD St. Mary's Covenant John Street Peekskill, NY 10566	Director
Aram Casparian 32 Cornwall Avenue Cornwall-On-Hudson, NY 12520	Director
Darren P. DeVerna 770 Gramatan Avenue Mount Vernon, NY 10552	Director
Mauro C. Romita 25 Beech Tree Lane Pelham Manor, NY 10803	Director
Lawrence J. Ruisi 121 Whippoorwill Road Armonk, NY 10504	Treasurer
George T. Erbe, PhD 133 Norman Road New Rochelle, NY 10804	Vice Chairman



4. The dissolution of the Corporation was authorized by a unanimous written consent of the Directors on July 25, 2011.

5. At the time of dissolution, the Corporation is a Type B corporation without members.

6. The Corporation, pursuant to N-PCL Section 1002(d), filed with the Attorney General a certified copy of its Plan of Dissolution on \_\_\_\_\_.

7. The Plan of Dissolution filed with the Attorney General included a statement, required pursuant to N-PCL Section 1001(b), that the Corporation shall pay all outstanding liabilities prior to dissolution and that all remaining assets will be distributed as provided in its Certificate of Incorporation.

8. The Corporation elects to dissolve.

9. At the time the Corporation authorized its plan of dissolution and distributing assets, the Corporation did hold assets that were legally required to be used for a particular purpose pursuant to the New York N-PCL.

10. The Corporation carried out the Plan of Dissolution, and a copy of its final report showing zero assets has been filed with the Attorney General.

11. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the undersigned has signed this Certificate this \_\_\_\_ day of \_\_\_\_\_, 2012.

---

Name: Helen Turchioe  
Title: Executive Director

**CERTIFICATE OF DISSOLUTION**

**OF**

**PINNACLE HEALTHCARE, INC.**

**Under Section 1003 of the Not-for-Profit Corporation Law**

**FILED BY:**

**Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604**

**PLAN OF DISSOLUTION  
OF  
PINNACLE HEALTHCARE, INC.**

The Board of Directors, by unanimous written consent dated July 25, 2011, do hereby recommend that Pinnacle Healthcare, Inc. ("Corporation") be dissolved and its assets distributed upon approval of a Justice of the Supreme Court of the State of New York in accordance with the following plan:

**PROCEDURE FOR DISSOLUTION**

- A. There being no members of the Corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
- B. Approval of the dissolution of the Corporation is required by the New York State Department of Health.
- C. The Corporation shall pay all outstanding liabilities prior to dissolution.
- D. The assets owned by the Corporation, subject to any unpaid liabilities of the Corporation, shall be distributed as provided in the Corporation's Certificate of Incorporation to the following organizations which qualify as exempt organizations pursuant to Internal Revenue Code Section 501(c)(3): Sound Shore Health System, Inc.; and Westchester Putnam Health Management System, Inc.
- E. After distribution of assets, a Certificate of Dissolution shall be executed, verified, and all approvals required under Section 1002 of the Not-for-Profit Corporation Law shall be obtained.

**CERTIFICATION**

STATE OF NEW YORK)  
COUNTY OF ) ss:

I, Helen Turchioe, Executive Director of Pinnacle Healthcare, Inc., hereby certify that a Plan of Dissolution was duly submitted and passed by a unanimous written consent of the Board of Directors on July 25, 2011.

Dated: August 31, 2011

Helen Turchioe  
Name: Helen Turchioe  
Title: Executive Director

~~New York.~~

~~Westchester.~~

~~August 31, 2011.~~

~~Notary for.~~

~~Helen Turchioe  
Executive Director of Pinnacle Healthcare Inc.~~

Pinnacle Healthcare Inc.



PHYLLIS TACKET  
Notary Public, State of New York  
Qualified in Westchester County  
Reg. No. 01TA5053083  
My Commission Expires Dec. 11, 2013

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

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In the Matter of the Application of

**PINNACLE HEALTHCARE, INC.**

**VERIFIED PETITION**

**For Approval of Plan of Dissolution and Distribution of  
Assets pursuant to Section 1002 of the Not-for-Profit  
Corporation Law**

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**TO: THE SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

Petitioner, Pinnacle Healthcare, Inc., by their attorneys, Nixon Peabody LLP, Anita L. Pelletier, Esq., for its Petition herein respectfully alleges:

1. The name of the Corporation is Pinnacle Healthcare, Inc. The principal office is located at 500 Summit Lake Drive, Suite 190, Valhalla, New York 10595. The Corporation was formed on November 6, 1997 under Section 402 of the Not-for-Profit Corporation Law. A copy of the Corporation's Certificate of Incorporation, as amended, is attached as Exhibit A and a copy of the Corporation's By-laws are attached as Exhibit B. A Restated Certificate of Incorporation removing Riverside Health Care System, Inc. as an affiliate is pending approval by the New York Attorney General's Office and a Supreme Court Justice. A copy of the signed Restated Certificate of Incorporation and Department of Health Consent are attached as Exhibit C.

2. The names and addresses of the directors and officers of the Corporation are as follows:

<u>Name/Address</u>	<u>Title</u>
Edward B. MacDonald 125 Canopus Hollow Road Putnam Valley, NY 10579	Chairman
Philip Ambrosino 13 Waterside Close Eastchester, NY 10709	Secretary
John A. McGurty, Jr., MD St. Mary's Covenant John Street Peekskill, NY 10566	Director
Aram Casparian 32 Cornwall Avenue Cornwall-On-Hudson, NY 12520	Director
Darren P. DeVerna 770 Gramatan Avenue Mount Vernon, NY 10552	Director

<u>Name/Address</u>	<u>Title</u>
Mauro C. Romita 25 Beech Tree Lane Pelham Manor, NY 10803	Director
Lawrence J. Ruisi 121 Whippoorwill Road Armonk, NY 10504	Treasurer
George T. Erbe, PhD 133 Norman Road New Rochelle, NY 10804	Vice Chairman

3. As stated in the Corporation's Certificate of Incorporation, as amended, the purposes of the Corporation are:

"[to be formed and operate] exclusively for the charitable purpose of benefiting and supporting those entities of which Sound Shore Health System, Inc., or Westchester Putnam Health Management System, Inc. (the "Affiliates") is the sole corporate member (provided, in each case, that the organization is qualified under Section 501(c)(3) of the Internal Revenue Code of 1986 (as now in effect or may hereafter be amended) (the "Code") and is other than a private foundation under Code Sections 509(a)(1) or 509(a)(2)).

In furtherance thereof and without limiting the generality of the foregoing, the Corporation may: serve as the corporate member of one or more of the Affiliates; provide advice and assistance concerning long and short-range planning for, and monitor and provide advice and assistance to help coordinate the activities of, the Affiliates and their supported organizations, assist the Affiliates and their supported organizations in eliminating duplicative functions, provide management consulting assistance and funds to the Affiliates and their supported organizations to further improve and advance healthcare delivery and the knowledge, practice and teaching of medicine and nursing in all their branches, promote community-based treatment of those who are sick, infirm, injured or in any way afflicted with disease, including the promotion and advancement of medical aid, medical research, medical education, standards of medical care and health, support, and cooperate with, the Affiliates and their supported organizations in carrying out their charitable purposes; and doing and engaging in all activities that will further and are consistent with the foregoing purposes."

4. The Corporation is a Type B Corporation under Section 201 of the Not-for-Profit Corporation Law.

5. The statement of assets and liabilities of the Corporation as of July 31, 2011, is attached hereto as Exhibit D.

6. No gifts or other property are being held for restricted use by the Corporation.

7. Dissolution of the Corporation is contemplated and assets are to be distributed in accordance with the Plan of Dissolution.

8. The Certificate of Incorporation of the Corporation provides that it is formed to support and further to charitable purposes of the Affiliates, provided that such organizations are tax-exempt under Code Section 501(c)(3) and other than a private foundation under Code Sections 509(a)(1) or (2). Therefore, consistent with the Corporation's purposes as well as the dissolution clause in its Certificate of Incorporation, the Corporation's Board of Directors determined that it was just and proper to distribute any remaining assets after payment of liabilities to Sound Shore Health System, Inc. ("Sound Shore"), and Westchester Putnam Health Management System, Inc. ("Westchester Putnam"). Copies of IRS Publication 78 confirming the tax-exempt status of Sound Shore and Westchester Putnam are attached hereto as Exhibits E and F, respectively.

9. The Board of Directors of the Corporation, by unanimous written consent, approved the adoption of the Plan of Dissolution for the Corporation and authorized the winding up of the affairs of the Corporation in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the consent of the Board of Directors and the certified Plan of Dissolution adopted by the Board of Directors are attached hereto as Exhibit G and Exhibit H, respectively.

10. New York State Department of Health approval of the Plan of Dissolution is attached hereto as Exhibit I.

11. No previous application has been made for the relief requested herein.

WHEREFORE, Petitioner prays that the Court make an Order approving the Plan of Dissolution and Distribution of Assets of Pinnacle Healthcare, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: September 8, 2011

NIXON PEABODY LLP

By: 

Anita L. Pelletier, Esq.  
1300 Clinton Square  
Rochester, New York 14604



**VERIFICATION**

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss:

I, the undersigned, Helen Turchioe, being duly sworn deposes and says:

I am the Executive Director of Pinnacle Healthcare, Inc., the Corporation named in the above Petition, I reside at 3 Orchard Rd, Katonah NY 10536, New York. I have read the foregoing Petition and know the contents thereof, and the same is true of my own knowledge.

Helen Turchioe  
Name: Helen Turchioe  
Title: Executive Director

Sworn to before me this 19th  
day of AUGUST, 2011.

  
Notary Public

PHYLLIS TACKET  
Notary Public, State of New York  
Qualified in Westchester County  
Reg. No. 01TA5083083  
My Commission Expires Dec. 11, 2013

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Certificate of Dissolution of Pinnacle Healthcare, Inc., dated July 25, 2011.

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

**November 15, 2012**

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**D. Home Health Agency Licensures**

**Home Health Agency Licensures**

**Exhibit #16**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
2019 L	Angela Dawn Donahue d/b/a Quality Home Health Care (Otsego County)
2012 L	Care Connection Home Care, LLC (Nassau, Queens, Suffolk Counties)
1941 L	D2 Enterprises, Inc. d/b/a Home Helpers #58507 (Westchester County)
1663 L	Finest Home Care Corp. (Bronx, Richmond, Kings, Westchester, New York, Queens Counties)
1921 L	Golden Touch Home Health Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
1984 L	Goldenhearts Elderly Care Services, Inc. (Bronx, New York, Kings, and Queens Counties)
1978 L	Health and Comfort Home Care, Inc. (New York, Kings, Queens, Bronx, and Richmond Counties)
1697 L	Jacqueline Asante d/b/a Van Cortlandt Home Healthcare Agency (Bronx, County)

- 1809 L LH Wellbeing Care, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
- 2002 L Paraclete Home Health Care, LLC  
(Nassau, Suffolk and Queens Counties)
- 1997 L PSC Community Support Services, Inc. d/b/a Blue Parasol  
(New York, Kings, Queens, Bronx and Richmond Counties)
- 2014 L Responsible Care Staffing, Inc.  
(Bronx and New York Counties)
- 2003 L MJO Enterprises, Inc. d/b/a Right at Home  
(Nassau and Queens Counties)
- 2026 L SARA Companion Services, Inc.  
(Nassau, Suffolk, Queens, Kings, New York, Bronx, and Richmond Counties)
- 1934 L Today's Homecare, Inc.  
(Bronx, Kings, New York, Queens and Richmond Counties)
- 2044 L York Healthcare, LLC  
(Bronx, Richmond, New York, Nassau, Kings, and Queens Counties)
- 2011 L Oceanview Manor Home for Adults, Inc.  
(Kings County)
- 1988 L Advance Home Care, LLC d/b/a Sincere Care Agency  
(Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
- 1993 L Human Care, LLC  
(New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)
- 2012 L Light 101, Inc.  
(Bronx, Queens, Kings, Richmond, New York and Westchester Counties)



Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Angela Dawn Donahue d/b/a Quality Home Health Care  
Address: Richfield Springs  
County: Otsego  
Structure: Sole Proprietorship  
Application Number: 2019-L

Description of Project:

Angela Dawn Donahue d/b/a Quality Home Health Care, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietorship of Quality Home Health Care comprises the following individual:

Angela Dawn Donahue, L.P.N.  
L.P.N., Superior Home Health Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of Otsego and Herkimer Counties from an office located at 148 Main Street, Suite 2, Richfield Springs, New York 13439.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 11, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Care Connection Home Care, LLC  
Address: Wantagh  
County: Nassau  
Structure: Limited Liability Company  
Application Number: 2012-L

Description of Project:

Care Connection Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed members of Care Connection Home Care, LLC comprise the following individuals:

Richard W. Scher, D.C. – President and Managing Member – 51% Owner/Director, Care Connection, Inc.      Anne S. Scher – Member – 49% Officer Manager, Care Connection, Inc.

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 1100 Wantagh Avenue, Wantagh, New York 11793:

Nassau                      Queens                      Suffolk

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Homemaker  
Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 5, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: D2 Enterprises, Inc. d/b/a Home Helpers #58507  
Address: Dobbs Ferry  
County: Westchester  
Structure: For-Profit Corporation  
Application Number: 1941-L

Description of Project:

D2 Enterprises, Inc. d/b/a Home Helpers #58507, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

D2 Enterprises, Inc. has proposed to operate as a Franchisee of Home Helpers.

The applicant has authorized 200 shares of stock, which are owned as follows:

Barbara DiGuglielmo – 9 Shares Corporate Operations Manager, USA Mobility, Inc.	Maureen Raffa, RN, NP – 1 Share Nurse Practitioner, Westchester Medical Center
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The remaining 190 shares of stock remain unissued.

The Board of Directors of D2 Enterprises, Inc. d/b/a Home Helpers #58507 comprises the following individual:

Barbara DiGuglielmo – President, Vice President, Secretary, Treasurer  
(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 Westchester County from an office located at 145 Palisades Street, Suite 249, Dobbs Ferry, New York 10522.

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 5, 2012



Division of Home & Community Based Care  
Character and Competence Staff Review

Name of Agency:                   Finest Home Care Corp.  
Address:                            Brooklyn  
County:                             Kings  
Structure:                         For-Profit  
Application Number:            1663-L

Description of Project:

Finest Home Care Corp., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Lazer Sendrovitz – 95 Shares Owner/President, Novella Fashion Corp. Owner/President, Buccelli Uomo	Samuel Sendrovitz – 95 Shares Owner, WSF Realty
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Samuel Gluckman – 10 Shares  
Chief Executive Officer, Medistar Personnel, LLC

Affiliations:

- Owner, Medistar Personnel, LLC

The proposed Board Members of Finest Home Care Corp. comprises the following individuals:

Lazer Sendrovitz – Chief Executive Officer (Previously Disclosed)	Samuel Sendrovitz – President (Previously Disclosed)
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Samuel Gluckman – Director  
(Previously Disclosed)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1621 53<sup>rd</sup> Street, Brooklyn, New York 11204:

Bronx Richmond	Kings Westchester	New York	Queens
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The applicant proposes to provide the following health care services:

Nursing Physical Therapy Housekeeper	Home Health Aide Occupational Therapy	Personal Care Homemaker	Medical Social Services Speech Language Pathology
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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:                    October 9, 2012

Division of Home & Community Based Care  
Character and Competence Staff Review

Name of Agency: Golden Touch Home Health, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 1921-L

Description of Project:

Golden Touch Home Health, 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 members of the Golden Touch Home Health, LLC comprises the following individuals:

Abraham Eisen – Managing Member – 33.3% Assistant Administrator, Staten Island Care Center	Leo Weiss – Member – 33.3% President, Empire Group Consultants.
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Affiliations:

- Cold Springs Hills Center for Nursing and Rehabilitation (2004 – Present)

Shlomo Brach – Member – 33.3%  
Broker, YM Management, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review of the operations of the Cold Springs Hills Center for Nursing and Rehabilitation (2004 – Present) was performed as part of this review.

**Cold Spring Hills Center for Nursing and Rehabilitation** was fined one thousand dollars (\$1,000.00) pursuant to a stipulation and order dated May 27, 2008 for inspection findings of August 8, 2007 for violations 10 NYCRR Section 415.12(c)(1), Quality of Care: Pressure Sores.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 1274 49 Street, Suite 562, Brooklyn, New York 11219:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Nutrition	Homemaker
Housekeeper			

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: October 5, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Goldenhearts Elderly Care Services, Inc.  
Address: Bronx  
County: Bronx  
Structure: For Profit Corporation  
Application Number: 1984-L

Description of Project:

Goldenhearts Elderly Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Goldenhearts Elderly Care Services, Inc. is an existing companion care agency.

The applicant has authorized 200 shares of stock in Goldenhearts Elderly Care Services, Inc. which are owned as follows:

Geanette Browder, 102 shares Business Manager, Goldenhearts Elderly Care Services, Inc.	Lillian A. Carter, 50 shares Cancer Care Tech, Calvary Hospital (2000 – 2012)
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Charles L. Browder, 48 shares  
Maintenance worker, Goldenhearts Elderly  
Care Services, Inc.

The members of the Board of Directors of Goldenhearts Elderly Care Services, Inc. comprise the following individuals:

Geanette Browder, President/CEO (disclosed above)	Charles L. Browder, Vice President (disclosed above)
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Lillian A. Carter, Secretary/Treasurer (disclosed above)	Larry Carter, Ad Hoc Board Member Retired
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Carolyn Green, Ad Hoc Board Member  
Unemployment Claims Examiner,  
North Carolina Employment Commission

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 232 Betts Avenue, Bronx, New York 10473:

Bronx	New York	Kings	Queens
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker	Housekeeper
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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: October 10, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Health and Comfort Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For Profit Corporation  
Application Number: 1978-L

Description of Project:

Health and Comfort Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Valeriy Aronov.

The Board of Directors of Health and Comfort Home Care, Inc. comprises the following individuals:

Valeriy Aronov Manager, Independent Home Care, Inc. (PA)	Dina Davydov Manager, Fulton Dental, P.C.
--	--

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 2064 Brown Street, Brooklyn, New York 11229:

New York            Kings                                  Queens                                  Bronx                                  Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Homemaker
Housekeeper		

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 10, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Jacqueline Asante d/b/a Van Cortlandt Home Healthcare Agency  
Address: Bronx  
County: Bronx  
Structure: Sole Proprietorship  
Application Number: 1697-L

Description of Project:

Jacqueline Asante d/b/a Van Cortlandt Home Healthcare Agency, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Jacqueline Asante d/b/a Van Cortlandt Home Healthcare Agency is composed of the following sole proprietor:

Jacqueline Asante, R.N.  
Staff Nurse, Montefiore Homecare Agency

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of Bronx County from an office located at 1565 Grandcourse, Front I, Bronx, New York 10452.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 19, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: LH Wellbeing Care, Inc.  
Address: Ridgewood  
County: Queens  
Structure: For-Profit  
Application Number: 1809-L

Description of Project:

LH Wellbeing Care, Inc., a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Hui Ping Liu, HHA – 200 Shares  
Manager, American Business Institute, Corp.

The proposed Board Member of LH Wellbeing Care, Inc., comprises the following individual:

Hui Ping Liu, HHA – Owner, Manager  
(Previously Disclosed)

The Office of the Professions of the State Education Department and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professional associated with this application.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 1711 Madison Street - #3R, Ridgewood, New York 11385:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Audiology	Speech-Language Pathology
Respiratory Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 11, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Paraclete Home Health Care, LLC  
Address: Dix Hills  
County: Suffolk  
Structure: Limited Liability Company  
Application Number: 2002-L

Description of Project:

Paraclete Home Health Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Paraclete Home Health Care, LLC is as follows:

Marie R. Lochard, R.N., MSN, CRNA, 100%  
Nurse Anesthetist, St. Catherine of Sienna Hospital

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located in Nassau County:

Nassau	Suffolk	Queens
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Speech Language Pathology	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 19, 2012



Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: PSC Community Support Services, Inc.  
d/b/a Blue Parasol  
Address: Brooklyn  
County: Kings  
Structure: Not-for-Profit Corporation  
Application Number: 1997-L

Description of Project:

PSC Community Support Services, Inc. d/b/a Blue Parasol, a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

PSC Community Support Services, Inc. d/b/a Blue Parasol is a subsidiary organization of PSC Community Services, Inc., a not-for-profit corporation. The Board of Directors of PSC Community Services, Inc. and PSC Community Support Services, Inc. d/b/a Blue Parasol are the same.

The Board of Directors of PSC Community Support Services, Inc., d/b/a Blue Parasol and PSC Community Services, Inc. comprises the following individuals:

Gerald A. Esposito, President  
District Manager, Brooklyn Community  
Board #1

Henry Lajca, First Vice President  
Retired

Frances X. Gates, Second Vice President  
Production Manager, Imperial Paper Box  
Corporation

Anna Monasterski, Secretary  
Associate, J.P. Morgan Chase

Antoinette Fiorato, R.N., Treasurer  
Director of Nursing Operations, Elmhurst  
Hospital Center

Richard Brzozowski, Board Member  
Retired

Mark Chroscielewski, Board Member  
President, B. I. Max, Inc. (software  
company)

Richard Hermanowski, Board Member  
Retired

Serhej Hosovsky, Esq., Board Member  
Principal, Hoshovsky Law Firm

Irene Klementowicz, Board Member  
Retired

Christopher H. Olechowski, Board Member  
Program Director, PSC Community  
Services, Inc.

Stephen Weidberg, Board Member  
Branch Manager/VP, Apple Bank  
for Savings

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the licenses of the healthcare professionals associated with this application. In addition, a Certificate of Good Standing has been received for the attorney.

The applicant proposes to serve the residents of the following counties from an office located at 120 Jewel Street, 2<sup>nd</sup> Floor, Brooklyn, New York 11222:

New York                      Kings                                      Queens                                      Bronx                                      Richmond

The applicant proposes to provide the following health care services:

Nursing                                      Home Health Aide                                      Personal Care  
Homemaker                                      Housekeeper

A review of the following agency was performed as part of this review:

PSC Community Services, Inc.

The information provided by the Division of Home and Community Based Services has indicated that the home care agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

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:                      October 19, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Responsible Care Staffing, Inc.  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 2014-L

Description of Project:

Responsible Care Staffing, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Wilson Encarnacion owns 100 shares and Bernice Reid Encarnacion owns 100 shares.

The Board of Directors of Responsible Care Staffing, Inc. comprises the following individuals:

Wilson Encarnacion, Chairperson, Secretary, Treasurer Student, Bronx Community College	Bernice Reid Encarnacion, R.N. Staff nurse, Westchester Square Hospital
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located in either Bronx or New York County:

Bronx	New York
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide
Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 10, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: MJO Enterprises, Inc. d/b/a Right at Home  
Address: Franklin Square  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2003-L

Description of Project:

MJO Enterprises, 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.

MJO Enterprises, Inc. has proposed to operate as a Franchisee of Right at Home.

The applicant has authorized 200 shares of stock, which are owned as follows:

Manfred J. Obermeir, HHA – 200 Shares  
Support Services Manager, Curtis Mallet Prevost Colt & Mosle

The Board of Directors of MJO Enterprises, Inc. d/b/a Right at Home comprises the following individual:

Manfred J. Obermeir - President  
(Previously Disclosed)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 752A Hempstead Turnpike, Suite 201, Franklin Square, New York 11010:

Nassau                      Queens

The applicant proposes to provide the following health care services:

Nursing                      Personal Care                      Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 1, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: SARA Companion Services, Inc.  
Address: Valley Stream  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2026-L

Description of Project:

SARA Companion Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. SARA Companion Services, Inc. is an existing companion care agency.

The applicant has authorized 200 shares of stock which are owned solely by Irwin J. White.

The Board of Directors of SARA Companion Services, Inc. comprises the following individuals:

Irwin J. White, President, Secretary President/CEO, Wics Technology, Inc. President, SARA Companion Services, Inc.	Stacey L. White, R.N., Vice President, Treasurer Field Case Manager, Coventry Workers Compensation Services
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 201 East Merrick Road, Suite 09, Valley Stream, New York 11580:

Nassau            Suffolk

The applicant proposes to serve the residents of the following counties from an office located in Queens County:

Queens            Kings            New York            Bronx            Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Medical Social Services	Homemaker	Housekeeper

Review of the Disclosure Information indicates that the applicant has no affiliations with other health care facilities.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 10, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Today's Homecare, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 1934-L

Description of Project:

Today's Homecare, Inc., a for-profit business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows:

Moshe Weiss – 180 shares Sarah Weiss – 20 Shares

The board members of Today's Homecare, Inc. comprise the following individuals:

Moshe Weiss – President Sarah Weiss, HHA - Director  
Executive Director, Everyday Realty Home Health Aide, HCS Home Care Service

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a HHA, currently employed as a HHA and has no convictions or findings.

The applicant proposes to serve the residents of the following counties from an office located at 735 Wythe Avenue, Brooklyn, New York 11211:

Bronx Kings New York Queens  
Richmond

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Medical Social Services  
Occupational Therapy Physical Therapy Housekeeper Speech-Language Pathology  
Respiratory Therapy Audiology Nutrition Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 5, 2012

Division of Home & Community Based Care  
Character and Competence Staff Review

Name of Agency: York Healthcare, LLC  
Address: Queens  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2044-L

Description of Project:

York Healthcare, 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 members of the York Healthcare, LLC comprises the following individuals:

Matthew Russo, Member – 50%  
Sales Executive, Gartner, Inc.

Melquisedec T. Escobar, Member – 50%  
Administrator, Caring LHCSA, LLC

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located Queens County:

Bronx	New York	Kings	Queens
Richmond	Nassau		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Nutrition	Speech-Language Pathology
Housekeeper	Respiratory Therapy	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: October 5, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Advance Home Care, LLC d/b/a Sincere Care Agency  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 1988-L

Description of Project:

Advance Home Care, LLC d/b/a Sincere Care Agency, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Sincere Care Agency, Inc., is a licensed home care services agency, that was previously approved as a home care services agency by the Public Health Council at its September 7, 2007 meeting and subsequently licensed as 1445L001.

Sincere Care Agency, Inc. has entered into a management agreement with Advance Home Care, LLC which was approved by the Department of Health on March 3, 2011.

The sole member of Advance Home Care, LLC d/b/a Sincere Care Agency comprises the following individual:

Reneta Khavin – Speech Language Pathologist  
Administrative Assistant, Friendly Home Care, Inc.

Affiliations:

- Board Secretary, Friendly Home Care, Inc. (02/2006-09/2010)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1615 Sheepshead Bay, Office 2R, Brooklyn, New York 11235:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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A review of the operations of Friendly Home Care, Inc. (02/2006-09/2010) was performed as part of this review. 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.

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: October 11, 2012



Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Human Care, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 1993-L

Description of Project:

Human Care, LLC, a limited liability company, requests approval for a change in ownership of Bangladesh American Association for Rehabilitation in New York, Inc. under Article 36 of the Public Health Law.

Bangladesh American Association for Rehabilitation in New York, Inc. was previously approved as a licensed home care services agency by the Public Health Council at its July 19, 2002 meeting and subsequently licensed as 1131L001.

The agency has been operated under a management agreement between Bangladesh American Association for Rehabilitation in New York, Inc. and Human Care, LLC which was approved by the Department in June 2011.

The members of Human Care, LLC are as follows:

Moshe Goldberger, 50%	Miriam Friedman, 50%
Administrator, Human Care, LLC	CFO, Human Care, LLC
Manager, Yossi's Bakery	Financial Officer, Fabric Palace

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 1642 63<sup>rd</sup> Street, Brooklyn, New York 11204:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Homemaker		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: October 19, 2012

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Light 101, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For Profit Corporation  
Application Number: 2122-L

Description of Project:

Light 101, Inc., a business corporation, requests approval for a change in stock ownership of Light 101, Inc., a New York licensed home care services agency, under Article 36 of the Public Health Law.

Light 101, Inc. was previously approved as a home care services agency by the Public Health Council at its August 4, 2011 meeting and subsequently licensed as 1974L001.

The proposed members of the Board of Directors of Light 101, Inc. after the change in ownership are as follows:

Alexander Margulis, President, Treasurer 100 shares President, Light 101, Inc.	Aleksandr Vaysblat, Secretary 100 shares President, Grupp II, Inc.
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to continue to serve the residents of the following counties from an office located at 1954 78<sup>th</sup> Street, 2<sup>nd</sup> Floor, Brooklyn, New York 11214:

Bronx	Kings	New York
Queens	Richmond	Westchester

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Occupational Therapy	Speech-Language Pathology	Physical Therapy
Respiratory Therapy	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: November 6, 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 6th day of December, 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.

<u>NUMBER:</u>	<u>FACILITY:</u>
2019 L	Angela Dawn Donahue d/b/a Quality Home Health Care (Otsego County)
2012 L	Care Connection Home Care, LLC (Nassau, Queens, Suffolk Counties)
1941 L	D2 Enterprises, Inc. d/b/a Home Helpers #58507 (Westchester County)
1663 L	Finest Home Care Corp. (Bronx, Richmond, Kings, Westchester, New York, Queens Counties)
1921 L	Golden Touch Home Health Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)

1984 L Goldenhearts Elderly Care Services, Inc.  
(Bronx, New York, Kings, and Queens Counties)

1978 L Health and Comfort Home Care, Inc.  
(New York, Kings, Queens, Bronx, and Richmond Counties)

1697 L Jacqueline Asante d/b/a Van Cortlandt Home  
Healthcare Agency  
(Bronx, County)

1809 L LH Wellbeing Care, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and  
Queens Counties)

2002 L Paraclete Home Health Care, LLC  
(Nassau, Suffolk and Queens Counties)

1997 L PSC Community Support Services, Inc. d/b/a Blue  
Parasol  
(New York, Kings, Queens, Bronx and Richmond  
Counties)

2014 L Responsible Care Staffing, Inc.  
(Bronx and New York Counties)

2003 L MJO Enterprises, Inc. d/b/a Right at Home  
(Nassau and Queens Counties)

2026 L SARA Companion Services, Inc.  
(Nassau, Suffolk, Queens, Kings, New York, Bronx,  
and Richmond Counties)

1934 L Today's Homecare, Inc.  
(Bronx, Kings, New York, Queens and Richmond  
Counties)

2044 L York Healthcare, LLC  
(Bronx, Richmond, New York, Nassau, Kings, and  
Queens Counties)

2011 L Oceanview Manor Home for Adults, Inc.  
(Kings County)

- 1988 L Advance Home Care, LLC d/b/a Sincere Care Agency  
(Bronx, Queens, Kings, Richmond, Nassau and New  
York Counties)
- 1993 L Human Care, LLC  
(New York, Bronx, Kings, Richmond, Queens, and  
Nassau Counties)
- 2012 L Light 101, Inc.  
(Bronx, Queens, Kings, Richmond, New York and  
Westchester Counties)

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

**December 6, 2012**

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**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**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C.</u> <u>Recommendation</u></b>
1.	122075 E	Clifton-Fine Health Care Corporation d/b/a Clifton-Fine Hospital (St. Lawrence County) Mr. Booth - Interest	Contingent Approval

**Residential Health Care Facility – Establish/Construct**

**Exhibit #20**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C.</u> <u>Recommendation</u></b>
1.	112339 E	Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center (Putnam County) Mr. Fensterman - Recusal	Contingent Approval
2.	121191 E	Eastchester Rehabilitation and Health Care Center (Bronx County) Mr. Fensterman - Recusal	Approval

- |    |          |  |                     |
|----|----------|--|---------------------|
| 3. | 122095 E | Queens Boulevard Extended Care Facility Management, LLC<br>d/b/a Queens Boulevard Extended Care Facility<br>(Queens County)<br>Mr. Fensterman - Recusal        | Contingent Approval |
| 4. | 121347 E | Hollis Operating Co., LLC<br>d/b/a Holliswood Center for Rehabilitation and Healthcare<br>(Queens County)<br>Mr. Fassler – Recusal<br>Mr. Fensterman - Recusal | Contingent Approval |

**Certified Home Health Agencies – Establish**

**Exhibit #21**

- |    | <u>Number</u> | <u>Applicant/Facility</u>  | <u>E.P.R.C. Recommendation</u> |
|----|---------------|--|--------------------------------|
| 1. | 122145 E      | Gamzel NY, Inc. d/b/a Revival Home Health Care<br>(Kings County)<br>Mr. Fensterman – Recusal | Contingent Approval            |
| 2. | 121240 E      | Your Choice At Home, Inc.<br>(Kings County)<br>Mr. Fassler – Interest                        | Contingent Approval            |

**Amended and Restated Certificate of Incorporation**

**Exhibit #22**

- |    | <u>Applicant</u>                                | <u>E.P.R.C. Recommendation</u> |
|----|---|--------------------------------|
| 1. | Health Alliance, Inc.<br>Dr. Berliner – Recusal | Approval                       |
| 2. | Benedictine Hospital<br>Dr. Berliner – Recusal  | Approval                       |
| 3. | The Kingston Hospital<br>Dr. Berliner – Recusal | Approval                       |

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #23**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C.</u></b> <b><u>Recommendation</u></b>
1.	2011 L	Oceanview Manor Home for Adults, Inc. (Kings County) Mr. Fensterman - Recusal	Contingent Approval





# Public Health and Health Planning Council

Project # 122075-E  
**Clifton-Fine Health Care Corporation  
d/b/a Clifton-Fine Hospital**

**County:** St. Lawrence (Star Lake)  
**Purpose:** Establishment

**Program:** Acute Care Services  
**Submitted:** August 9, 2012

## Executive Summary

### Description

Clifton-Fine Health Care Corporation d/b/a Clifton-Fine Hospital, a to-be-established not-for-profit corporation, requests approval to become the established operator of Clifton-Fine Hospital, which is presently owned and operated as a proprietary public benefit corporation (PBC). Clifton-Fine Hospital, located at 1014 Oswegatchie Trail, Star Lake, is a 20-bed critical access hospital (CAH) in one of the most remote areas of New York State.

There is no acquisition cost involved in this transition, and there will be no programmatic changes. The hospital will be transferred by the PBC to Clifton-Fine Health Care Corporation (CFHCC) through an asset transfer agreement, under which CFHCC would acquire all the assets and assume all the liabilities of the PBC.

The transfer will allow the hospital to cease participation in the mandatory New York State Civil Service Retirement System and replace it with a 403(b) retirement plan, which will decrease the financial burden on the hospital since they will not have to solely fund the new retirement system. The hospital will contribute an automatic 3% (of income) contribution and up to 6% (of income) matching contribution.

DOH Recommendation  
Contingent approval.

### Need Summary

In 2011, Clifton-Fine had 152 inpatient discharges and 1,705 emergency department visits. Clifton-Fine's

extension clinic provided 6,133 visits in 2010. There will be no change in services as a result of this project.

### 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 project and there will be no change in the daily 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 an executed Asset Transfer Agreement that is acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement that is acceptable to the Department. [BFA]
3. Submission of a photocopy of the applicant's filed Certificate of Incorporation, and any amendments thereto, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's adopted Bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of a fully executed asset transfer agreement between the applicant and the current operator, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, indicating its intent to do business as Clifton-Fine Hospital, acceptable to the Department. [CSL]

Council Action Date

**December 6, 2012.**

# Need Analysis

## Background

Clifton-Fine Hospital (CFH) is a 20-bed Critical Access Hospital located at 1014 Oswegatchie Trail, Star Lake, 13690, in Saint Lawrence County. The facility seeks to establish Clifton-Fine Healthcare Corporation (CFHCC), a new not-for-profit corporation, as the new operator of Clifton-Fine Hospital.

## Services and Utilization

Clifton-Fine Hospital is authorized to provide the following NYSDOH certified services:

- CT Scanner
- Dental O/P
- Emergency Department
- Nuclear Medicine – Diagnostic
- Primary Medical Care O/P
- Swing Bed Program
- Therapy - Physical O/P

During the period of 2008 to 2011, the facility recorded the following inpatient and outpatient utilization statistics, as shown in Table 1:

<u>Category</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Total Inpatient Discharges	163	211	231	152
Total ED Visits	1,556	1,420	1,470	1,705
% ED visits Admitted	2.8	5.0	5.6	2.4
General Clinic Visits	3,529	4,967	6,133	

*Source: SPARCS 2008 – August 2011 (Inpatient Discharges and ED Statistics).  
Institutional Cost Reports 2008 – 2010 (General Clinic Visits).*

Clifton-Fine Hospital is located in a remote section of Saint Lawrence County. The 2010 census for the county was 111,944, which was a slight increase from 2010, when it was 111,931. The majority of the hospital's inpatients are residents of Saint Lawrence County. From 2008 to 2011, the CFH had an average of 189 total inpatient discharges a year. Of these, approximately 91.0 percent were residents of Saint Lawrence County.

There will be no change in services, management, workforce, medical staff, or governing body as a result of this project.

In an effort to improve the availability, quality and cost effectiveness of services to its community, CFH has begun to seek an affiliation with a larger hospital or health system. Additionally, CFH participates with seven other North Country hospitals in a HEAL 21 project to evaluate collaborative initiatives.

## Conclusion

Clifton-Fine Hospital proposes a change in ownership structure to remain viable and continue providing essential healthcare services to the communities it serves. The services provided by CFH will not change as a result of the requested ownership transfer. The future demand for healthcare services in the service area is expected to remain unchanged.

## Recommendation

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

## Programmatic Analysis

### Background

Establish Clifton-Fine Healthcare Corporation, a new not-for-profit corporation, as the operator of Clifton-Fine Hospital. The hospital is presently owned and operated by a public benefit corporation. There will be no changes to the hospital's management, workforce, staff or services concurrent with this request.

### Character and Competence

The board members of the new not-for-profit are the same as the current board members of the public benefit corporation.

<u>Name</u>	
Walter Todd	President
William Hunter	Vice President
Lorraine Laurin	Secretary
William Reil	Treasurer
Derek Lough	
Robert Adams	
Kathleen Nevil	
Mark Hall	Ex Officio
Robert Snider	Ex Officio
Roberts Kimmees	Ex Officio, CEO

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

### Asset Transfer Agreement

A draft asset transfer agreement has been submitted by the applicant transferring all assets and liabilities from the Public Benefit Corporation to the not-for-profit corporation at no monetary cost.

The proposed not-for-profit corporation has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

### Assignment and Assumption Agreement

A draft assignment and assumption agreement has been submitted by the applicant assigning all assets and liabilities from the Public Benefit Corporation to the not-for-profit corporation.

### 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 the hospital, although the facility is expected to experience cost benefits from the change in the retirement plan.

Presented as BFA Attachment B, is the pro-forma balance sheet of Clifton-Fine Hospital, which shows a positive fund balance of \$3,123,566 on the first day of operation.

Presented as BFA Attachments A, is the financial summary of the Clifton-Fine Hospital as a Public Benefit Corporation, which has maintained a positive net asset position and experienced operating losses of \$632,970 and \$452,442 in 2010 and 2011, respectively. The losses are due to the increase in costs from the mandated NYS Retirement System, which is the reason why Clifton-Fine Hospital is requesting to become a not-for-profit hospital under this CON application. Clifton-Fine Hospital has initiated the following expense reductions in 2011 and 2012 to reduce the losses from operations: elimination of pay increases, reducing 5% of the F.T.E.s without interrupting patient care, and renegotiation of supplier contracts.

Clifton-Fine Hospital is also in the process of seeking an affiliation with a larger hospital or health system to improve their long-term viability once not-for-profit status has been accomplished.

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	Financial Summary for Clifton-Fine Hospital, 2010/2011
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary for Clifton-Fine Hospital as of August 31, 2012 internal
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 6th day of December, 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 Clifton-Fine Health Care Corporation, a new not-for-profit corporation as the new operator of Clifton-Fine 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:

122075 E

FACILITY/APPLICANT:

Clifton-Fine Health Care Corporation d/b/a  
Clifton-Fine Hospital

APPROVAL CONTINGENT UPON:

1. Submission of an executed Asset Transfer Agreement that is acceptable to the Department of Health. [BFA]
2. Submission of an executed Assignment and Assumption Agreement that is acceptable to the Department. [BFA]
3. Submission of a photocopy of the applicant's filed Certificate of Incorporation, and any amendments thereto, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's adopted Bylaws, acceptable to the Department. [CSL]
5. Submission of a photocopy of a fully executed asset transfer agreement between the applicant and the current operator, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, indicating its intent to do business as Clifton-Fine 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 # 112339-E Putnam Nursing & Rehabilitation Center

**County:** Putnam (Holmes)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** December 9, 2011

### Executive Summary

#### Description

Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center, a limited liability company formed to pursue this CON, requests approval to be established as the new operator of KNH Partners d/b/a Putnam Nursing and Rehabilitation Center, an existing 160-bed proprietary residential health care facility (RHCF) located at 404 Ludingtonville Road, Holmes. Additionally, a separate but related real estate company, Putnam Acquisition I, LLC, will acquire the facility's property. Ownership of the operations before and after the requested change is as follows:

Hills Rehabilitation and Nursing Center; and Park Manor Acquisition II, LLC d/b/a Middletown Park Rehabilitation and Health Care Center.

**DOH Recommendation**  
Contingent approval.

#### Need Summary

There will be no change in capacity as a result of this project. There was a decrease in utilization at Putnam Nursing and Rehabilitation Center from 2008 to 2010.

<b>Current</b>	<b>Proposed</b>
<i>KNH Partners, d/b/a Putnam Nursing and Rehabilitation Center (A Partnership)</i>	<i>Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing &amp; Rehabilitation Center</i>
<b>MEMBERS:</b>	<b>MEMBERS:</b>
-- Irene Kaye (65%)	-- Lizer Jozefovic (50%)
-- Carol Halpern (35%)	-- Mark Neuman (50%)

#### 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.

Ownership of the realty before and after the proposed transaction is as follows:

#### Financial Summary

Purchase price for the RHCF operating assets are \$4,350,000, which will be met via members' equity of \$2,412,500 and a \$1,937,500 FHA-insured mortgage (30 yrs. @ 3.9%). The real property will be acquired for \$5,000,000, plus \$187,500 for the sprinkler system, and be funded entirely by a \$5,187,500 FHA-insured mortgage (30 yrs. @ 3.9%). The letter of interest has been provided by Red Mortgage Capital, LLC. There are no project costs associated with this proposal.

<b>Current</b>	<b>Proposed</b>
<i>404 Ludingtonville Associates, LLC</i>	<i>Putnam Acquisition I, LLC</i>
<b>MEMBERS:</b>	<b>MEMBERS:</b>
-- Leslie Kaye (30%)	-- Lizer Jozefovic (50%)
-- Irene Kaye (30%)	-- Mark Neuman (50%)
-- Alan Kaye (20%)	
-- Deena Kaye (20%)	

<b>Budget:</b>	<i>Revenues:</i>	<b>\$ 11,858,791</b>
	<i>Expenses:</i>	<b>11,219,444</b>
	<i>Gain/ (Loss)</i>	<b>\$ 639,347</b>

The proposed members of Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center have ownership interests in four RHCF facilities located in New York State: Sky View Rehabilitation and Health Care Center, LLC; Waterview Acquisition I, LLC d/b/a Waterview Hills Rehabilitation and Nursing Center; Salem Acquisition I, LLC d/b/a Salem

Subject to 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 lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of an executed mortgage commitment to fund the purchase of the operations, that is acceptable to the Department of Health. [BFA]
3. Submission of an executed mortgage commitment to fund the purchase of the real property, that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital commitment, that is acceptable to the Department of Health. [BFA]
5. Photocopy of the dated and executed Certificate of Amendment of the Article of Organization, acceptable to the Department. [CSL]
6. Photocopy of executed Operating Agreement, acceptable to the Department. Operating Agreement must include a provision stating that neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the prior approval of the Department of Health. [CSL]
7. Photocopy of the executed Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Photocopies of the executed Asset Purchase Agreement and attachments thereto, acceptable to the Department. [CSL]
9. Submission of a complete Schedule 3B, Part III, acceptable to the Department. [CSL]
10. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

Council Action Date

**December 6, 2012.**



## Need Analysis

### Background

Putnam Nursing and Rehabilitation Center, a 160 bed Proprietary Residential Health Care Facility located at 404 Ludingtonville Road, Holmes, 12531, in Putnam County, seeks approval to establish Putnam Operation Acquisition I, LLC as the new operator of Putnam Nursing & Rehabilitation Center.

### Analysis

Putnam Nursing and Rehabilitation Center's utilization was lower than Putnam County for all years under consideration. Putnam Nursing's utilization decreased by 10% while utilization for Putnam County decreased by 5.3%.

Although utilization has decreased, a need for 126 beds remains in Putnam County.

<u>RHCF Occupancy</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Putnam Nursing and Rehabilitation	97.8%	87.0%	85.8%
Putnam County	92.1%	92.5%	86.8%

<u>RHCF Bed Need</u>	<u>Putnam County</u>
2016 Projected Need	446
Current Beds	320
Beds Under Construction	0
Total Resources	320
Unmet Need	126

### Recommendation

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

## Programmatic Analysis

### Facility Information

	<u>Existing</u>	<u>Proposed</u>
<u>Facility Name</u>	Putnam Nursing and Rehabilitation Center	Putnam Nursing and Rehabilitation Center
<u>Address</u>	404 Ludingtonville Road Holmes, NY. 12531	Same
<u>RHCF Capacity</u>	160	Same
<u>ADHC Program Capacity</u>	N/A	N/A
<u>Type Of Operator</u>	Partnership	LLC
<u>Class Of Operator</u>	Proprietary	Proprietary
<u>Operator</u>	KNH Partners  <u>Members:</u> Irene Kaye                      65% Carol Hapern                    35%	Putnam Operation Acquisition I, LLC  <u>Managing Members:</u> Lizer Jozefovic                      50% Mark Neuman                        50%

Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

Sky View Rehab and HCC	10/03 to present
Salem Hills Rehab and HCC	10/05 to present
Waterview Hills Rehab and HCC	10/05 to present
Chapin Hill Nursing & Rehab Ctr. (NJ)	01/10 to present
Middletown Park Rehab and HCC	04/10 to present
West Broward Care Center (FL)	01/10 to present
Lackawanna Health & Rehab Center (PA)	11/11 to present
Long Island Care Center	01/92 to present

- INDIVIDUAL BACKGROUND REVIEW:

**Mark Neuman** has disclosed ownership interest in the following Residential Health Care Facilities:

Long Island Care Center	01/92 to present
Sky View Rehabilitation and Health Care Center	10/03 to present
Salem Hills Rehabilitation and Health Care Center	10/05 to present
Waterview Hills Rehabilitation and Health Care Center	10/05 to present
Middletown Park Rehabilitation and Health Care Center	04/10 to present
Chapin Hill Nursing and Rehabilitation Center (Red Bank, NJ)	01/10 to present
West Broward Care Center (Plantation, FL)	01/10 to present
Lackawanna Health and Rehab Center (Lackawanna, PA)	11/11 to present

**Lizer Jozefovic** holds a NYS Nursing Home Administrator License, which is in good standing. His license is currently Involuntarily Inactive, and he cannot practice nursing home administration in New York State. He has disclosed ownership interest in the following Residential Health Care Facilities:

Sky View Rehabilitation and Health Care Center	10/00 to present
Salem Hills Rehabilitation and Health Care Center	10/05 to present
Waterview Hills Rehabilitation and Health Care Center	10/05 to present
Middletown Park Rehabilitation and Health Care Center	10/10 to present
Chapin Hill Nursing and Rehabilitation Center (Red Bank, NJ)	01/10 to present
West Broward Care Center (Plantation, FL)	01/10 to present
Lackawanna Health and Rehab Center (Lackawanna, PA)	11/11 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, and Long Island Care Center for the periods identified above results in a conclusion of a 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 a substantially consistent high level of care, since there were no repeat enforcements.

A review of Schedule 2D submitted to the New York State Department of Health from 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 a substantially consistent high level of care, since there were no enforcements.

A review of Schedule 2D submitted to the New York State Department of Health from 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 a substantially consistent high level of care, since there were no enforcements.

A review of Schedule 2D submitted to the New York State Department of Health from 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 a substantially consistent high level of care, since there were no repeat enforcements.

**Project Review**

No changes in the program or physical environment are proposed in this application.

**Recommendation**

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

<h2>Financial Analysis</h2>
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**Purchase/Sale Agreement for the Operations**

The applicant has submitted an executed agreement to purchase the RHCF operating interest, the terms of which are summarized below:

<i>Date:</i>	August 8, 2011
<i>Seller:</i>	KNH Partners d/b/a Putnam Nursing and Rehabilitation Center (A Partnership)
<i>Purchaser:</i>	Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center
<i>Assets Transferred Operations:</i>	Rights, title and interest in assets related to the nursing home business including: business name, intelligent property, goodwill, leasehold improvements, equipment, inventory, Medicare and Medicaid provider numbers, provider agreements, resident deposits; permits, computer software, procedure manuals, phone numbers, resident and employee records, business records, and rights under KNH's non-union facility plans, and KNH's collective bargaining agreement with the union.
<i>Excluded Assets:</i>	Cash, all accounts & loans receivable, third party claims, refunds, and retroactive rate increases.
<i>Assumed Liabilities:</i>	Those accruing on or after closing date.
<i>Purchase Price:</i>	\$4,350,000
<i>Payment of Purchase Price:</i>	\$100,000 escrow deposit at agreement signing \$4,250,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity – Putnam Operation Acquisition I, LLC members will contribute	\$2,412,500
Mortgage – 3.9%, 30-year term -Insured by FHA under Section 232 pursuant to Section 223(f)	<u>1,937,500</u>
<b>Total</b>	<b>\$4,350,000</b>

Presented as BFA Attachment A is the proposed members' net worth summaries for Putman Operation Acquisition I, LLC, which reveals sufficient resources to meet the equity requirements.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. These are no outstanding Medicaid liabilities as of September 19, 2012.

#### Purchase/Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the real property, the terms are summarized below:

<i>Date:</i>	August 8, 2011
<i>Seller:</i>	404 Ludingtonville Associates, LLC
<i>Purchaser:</i>	Putnam Acquisition I, LLC
<i>Assets :</i>	Rights, title and interest in 6.95 acre parcel of improved land commonly known as 404 Ludingtonville Road and 3.64 acre parcel of vacant land commonly known as Lot 40 situated in Holmes, NY. This includes buildings, structures, fixtures and improvements affixed to or located on the land.
<i>Assumed Agreements:</i>	Assume all Seller's rights, title and interest in all contracts which extend beyond closing date that the purchaser is required to assume.
<i>Purchase Price:</i>	\$5,000,000 plus \$187,500 to reimburse seller for the cost of installing a sprinkler system
<i>Payment of Purchase Price:</i>	\$100,000 escrow deposit at agreement signing \$4,900,000 plus \$187,500 at closing.

The purchase price is proposed to be satisfied as follows:

Mortgage – 3.9%, 30 year term - Insured by FHA under Section 232 pursuant to Section 223(f)	<u>\$5,187,500</u>
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As noted above, the members and their interest for Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center (operator of the RHCF) and Putnam Acquisition I, LLC (the owners of the real property) are identical.

#### Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted a draft lease agreement, the terms are summarized below:

<i>Premises:</i>	An 160-Bed RHCF located at 404 Ludingtonville Road, Holmes, New York 12531
<i>Owner/Landlord:</i>	Putnam Acquisition I, LLC
<i>Lessee:</i>	Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center
<i>Term:</i>	Forty five years
<i>Rent:</i>	\$296,377 per year plus \$200,000 a year or \$496,377 per year (\$41,364.75 per month)
<i>Provisions:</i>	Triple net lease

The lease arrangement is a non-arm's length agreement. Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2012 Nursing Home Consolidated Capital (Schedule VI – Property), all of the historical costs under the return of and return on capital have been reimbursed.

Operating Budget

The applicant has provided an operating budget, in 2012 dollars, for the first year subsequent to change in ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$148.98	\$5,627,439
Medicare	573.64	4,274,772
Private Pay	317.26	<u>1,956,580</u>
Total Revenues:		\$11,858,791
Expenses:		
Operating		\$10,604,566
Capital		<u>614,878</u>
Total Expenses:		\$11,219,444
Net Income:		<u>\$639,347</u>
Utilization (resident days)		51,392
Occupancy		88%

The following is noted with respect to the submitted operating budget:

- Medicaid revenues are based on actual 2012 rates.
- Medicare and private revenues are based on actual rates.
- Overall utilization is projected at 88%. Utilization for the six years from 2006 through 2011 averaged 85.78%.
- Utilization by payor source is anticipated as follows:
 

Medicaid Fee-for-Service	73.5%
Medicare Fee-for-Service	14.5%
Private/Other	12.0%
- Breakeven utilization is projected at 82%.

Capability and Feasibility

Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center proposes to acquire the operating interest of KNH Partners d/b/a Putnam Nursing and Rehabilitation Center, a 160-bed proprietary RHCF for \$4,350,000.

The members will contribute \$2,412,500 in equity and enter into a proposed FHA insured mortgage with Red Mortgage Capital, LLC for \$1,937,500 at the above stated terms.

Concurrently and through Putnam Acquisition I, LLC, the proposed members have entered into a Real Estate Purchase Agreement with 404 Ludingtonville Associates, LLC to acquire their real property interest for \$5,000,000 plus \$187,500 for work done on the sprinkler system. The acquisition price will be satisfied through a \$5,187,500 FHA insured mortgage with Red Mortgage Capital, LLC at the above stated terms.

Working capital is estimated at \$1,869,908 and is based on two months of the first year expenses; half, or \$934,954, will be satisfied from members equity. The remaining \$934,954 will be satisfied through a five year loan at 7% from Capital One Bank. Review of BFA Attachment A, summary of net worth reveals sufficient resources for working capital equity.

Presented as BFA Attachment B is a pro-forma balance sheet for Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center, which shows operations will start off with \$1,477,546 in member's equity. It should be noted that the total assets includes \$2,158,759 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill was eliminated from the equation, then total net asset would become a negative \$681,213.

The submitted budget indicates \$639,347 in net income would be generated in the first year after the change in ownership. Following is a comparison of 2011 historical and projected revenue and expense:

Projected Income	\$ 11,858,791
Projected Expense	<u>11,219,444</u>
Projected Net Income	\$639,347
Annual 2011 Income	\$10,904,765
Annual 2011 Expense	<u>9,865,494</u>
Annual 2011 Net Income (Loss)	\$1,039,271
Incremental Net Income (Loss)	<u>(\$399,924)</u>

It is estimated that incremental net revenue for all payors will increase approximately \$954,026, as the results of the following: Medicare revenues increasing \$1,050,445 as the results of utilization going from 11.83% to 14.50%; Medicaid revenues are expected to decrease \$519,637 as the result of a decline in the average daily rate, going from \$163 per patient day in 2011 to \$149 per patient day in 2012, on approximately the same number of patient days; and private pay revenues are expected to increase approximately \$423,218 as the result of an increase of utilization going from 10.11% to 12.00%. The applicant states that the utilizations assumptions are based on their experience in operating their other nursing homes. In support of utilization, the applicant states they are going to reach out to the community leaders and healthcare providers to develop programs that will address their needs. Operating and capital expenses are expected to increase in the first year by \$1,122,414 and \$231,536, respectively. The Department looked at the utilization and determined even if Medicare only went up by .17% with the other 2.5% increase in utilization being Medicaid patients, the facility would still generate a surplus of approximately \$93,635. The budget appears reasonable.

Putnam Operations Acquisition I, LLC, the real property owner, has provided a budget and projects an operating surplus of \$237,015 and \$241,515 in the first and third years, respectively. The budget appears reasonable.

As shown on BFA Attachment D, KNH Partners d/b/a Putnam Nursing & Rehabilitation Center shows the RHCF generated \$1,039,271 in excess revenues over expenses for the year ending 2011. For 2011, revenues increased \$1,623,084 with a 3.34% change in utilization; Medicaid patient days went from 82.39% in 2010, to 78.07% patient days in 2011, with Medicare patients days increasing by 1.69% and private pay patient days increasing by 1.63%. Expenses increased to \$335,670, going from \$9,529,824 in 2010, to \$9,865,494 in 2011. For the period ending December 31, 2011, KNH Partners d/b/a Putnam Nursing & Rehabilitation Center had a negative equity position of \$1,051,079 and a negative working capital position of \$254,844. When the realty entity is combined with the RHCF, the negative equity position drops to approximately \$544,601, which will be eliminated after the proposed sale. During the period 2009 through 2011, the RHCF average occupancy was 85.11%.

As shown on BFA Attachment E, Sky View Rehabilitation and Health Care Center, LLC, for the years from 2009 through 2011, the RHCF generated an average operating surplus of \$1,226,490, had an average negative working capital position of \$2,186,424, and had an average negative asset position of \$115,749. Average occupancy during this period was 96.20%.

As shown on BFA Attachment F, Waterview Acquisition I, LLC d/b/a Waterview Hills Rehabilitation and Nursing Center, for the years from 2009 through 2011, the RHCF generated an average operating surplus of \$624,161, had an average negative working capital position of \$149,223, and had an average asset position of \$7,104,228. Average occupancy during this period was 94.21%.

As shown on BFA Attachment G, Salem Acquisition I, LLC d/b/a Salem Hills Rehabilitation and Nursing Center, for the years from 2009 through 2011 the RHCF generated an average operating surplus of \$442,350, had an average



negative working capital position of \$224,859, and had an average asset position of \$2,098,240. Average occupancy during this period was 98.24%.

As shown on BFA Attachment H, Park Manor Acquisition II, LLC d/b/a Middletown Park Rehabilitation and Health Care Center and Park Manor Acquisition I, LLC, for the period starting March 17, 2010 through December 31, 2011, the RHCF generated an average operating surplus of \$331,436, after including \$514,026 average interest rate swap expense from the realty organization, they realized an average loss of \$182,590. During this period, the organization had an average negative working capital of \$429,795, an average net asset position of \$2,331,388, and average occupancy of 96.65%.

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

Recommendation

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

## Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, Putnam Operation Acquisition I, LLC d/b/a Putnam Nursing & Rehabilitation Center
BFA Attachment C	Pro-forma Balance Sheet, Putnam Acquisition I, LLC
BFA Attachment D	Financial Summary, KNH Partners d/b/a Putnam Nursing and Rehabilitation Center
BFA Attachment E	Financial Summary, Sky View Rehabilitation and Health Care Center, LLC
BFA Attachment F	Financial Summary, Waterview Acquisition I, LLC d/b/a Waterview Hills Rehabilitation and Nursing Center
BFA Attachment G	Financial Summary, Salem Acquisition I, LLC d/b/a Salem Hills Rehabilitation and Nursing Center
BFA Attachment H	Financial Summary, Park Manor Acquisition II, LLC d/b/a Middletown Park Rehabilitation and Health Care Center and Park Manor Acquisition I, 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 6th day of December, 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 Putnam Operation Acquisition I, LLC as the new operator of Putnam Nursing and Rehabilitation Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

112339 E

FACILITY/APPLICANT:

Putnam Operation Acquisition I, LLC d/b/a  
Putnam Nursing & Rehabilitation Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed lease rental agreement that is acceptable to the Department of Health. [BFA]
2. Submission of an executed mortgage commitment to fund the purchase of the operations, that is acceptable to the Department of Health. [BFA]
3. Submission of an executed mortgage commitment to fund the purchase of the real property, that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital commitment, that is acceptable to the Department of Health. [BFA]
5. Photocopy of the dated and executed Certificate of Amendment of the Article of Organization, acceptable to the Department. [CSL]
6. Photocopy of executed Operating Agreement, acceptable to the Department. Operating Agreement must include a provision stating that neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the prior approval of the Department of Health. [CSL]
7. Photocopy of the executed Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Photocopies of the executed Asset Purchase Agreement and attachments thereto, acceptable to the Department. [CSL]
9. Submission of a complete Schedule 3B, Part III, acceptable to the Department. [CSL]
10. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]

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 # 121191-E Eastchester Rehabilitation and Health Care Center

**County:** Bronx (Bronx)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** April 5, 2012

### Executive Summary

#### Description

Eastchester Rehabilitation and Health Care Center, an existing 200-bed residential health care facility (RHCF) located at 2700 Eastchester Road, Bronx, requests approval for a change in the membership ownership of the facility. Specifically, this change in establishment proposes the addition of eleven new members to the LLC, who will own a total of 38.375% of the LLC's interests. Additionally, one existing member is increasing his percentage interest by 3.00%. Two members, who own a total of 9.00% interest in the LLC have decided to withdraw as members. Thus, the total aggregate percentage interests that will be transferred if this application is approved is 41.375%.

The current and the proposed ownership is as follows:

	<u>Current</u>	<u>Proposed</u>	<u>Status</u>
Benjamin Landa	22.75%	13.125%	Decreasing
Martin Farbenblum	7.00%	10.00%	Increasing
Anthony Bacchi, MD.	10.00%	10.00%	No Change
Moshe Sirkis	0.00%	9.00%	New Member
Benjamin Fishoff	0.00%	7.525%	New Member
Deborah Philipson	22.75%	7.00%	Decreasing
Andrew Freundlich	3.00%	3.00%	No Change
Howard Freundlich	3.00%	3.00%	No Change
Jerry Weinstock	0.00%	6.00%	New Member
Benjamin Farbenblum	5.00%	5.00%	No Change
Regina Weinstock	8.00%	4.00%	Decreasing
Meryl Gross	0.00%	3.80%	New Member
Naomi Tessler	0.00%	3.00%	New Member
Ruth Hirsch	2.50%	2.50%	No Change
Abraham Fishoff	0.00%	2.40%	New Member
Barbara Gold	0.00%	2.40%	New Member
Arnold Klapper	2.00%	2.00%	No Change
Nat Sherman	0.00%	1.50%	New Member
Alan Chopp	0.00%	1.00%	New Member
Mayer Fischl	1.00%	1.00%	No Change
Johanon Hirsch	4.00%	1.00%	Decreasing
Irena Kostetsky	0.00%	1.00%	New Member
Olga Hirsch	0.00%	.750%	New Member
David Fried	1.00%	0.00%	Decreasing
Estate of Leopold Hirsch	8.00%	0.00%	Decreasing

The proposed new members also have ownership interests in other residential health care facilities: Nassau Extended Care Facility; Park Avenue Extended Care Facility; Throgs Neck Extended Care Facility; Townhouse Extended Care Center; White Plains Center for Nursing; The Hampton Center for Rehab & Nursing; Avalon Gardens Rehab & HCC and Bayview Nursing & Rehab Center.

DOH Recommendation Approval.

#### Need Summary

As this project involves only a partial 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

The issue of capability is centered on the purchaser's ability to meet the purchase price that the new members and one of the existing members is responsible for in acquiring of ownership interests. The purchasers will provide equity from their personal net worth statements to meet the purchase price. There are no significant issues of feasibility associated with this application, since there is no change in the facility operations. 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

**December 6, 2012.**

# Programmatic Analysis

## Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Eastchester Rehabilitation and Health Care Center	Same
<i>Address</i>	2700 Eastchester Road Bronx, NY 11469	Same
<i>RHCF Capacity</i>	200	Same
<i>ADHC Program Capacity</i>	N/A	N/A
<i>Type Of Operator</i>	LLC	LLC
<i>Class Of Operator</i>	Proprietary	Proprietary
<i>Operator</i>	Eastchester Rehabilitation and Health Care Center, LLC  <u>Continuing Members:</u> Managing Members: Benjamin Landa                   22.75% Deborah Philipson               22.75%  Anthony Bacchi, M.D.           10.00% Regina Weinstock               8.00% Martin Farbenblum             7.00% Andrew Freundlich           3.00% Howard Freundlich           3.00% Benjamin Farbenblum         5.00% Johanon Hirsch               4.00% Ruth Hirsch                   2.50% Arnold Klapper               2.00% Mayer Fischl                 1.00%  <u>Withdrawing Members</u> Leopold Hirsch*               8.00% David Fried                   1.00%  *deceased	Same  <u>Continuing Members:</u> Managing Members: Benjamin Landa                   13.125% Deborah Philipson               7.000%  Martin Farbenblum               10.000% Anthony Bacchi, M.D.           10.000% Andrew Freundlich             3.000% Howard Freundlich             3.000% Benjamin Farbenblum         5.000% Regina Weinstock               4.000% Ruth Hirsch                   2.500% Arnold Klapper               2.000% Johanon Hirsch               1.000% Mayer Fischl                 1.000%  <u>New Members</u> Moshe Sirkis                   9.000% Benjamin Fishoff               7.525% Jerome Weinstock             6.000% Meryl Gross                   3.800% Naomi Tessler                 3.000% Abraham Fishoff             2.400% Barbara Gold                 2.400% Nachum Sherman             1.500% Alan Chopp                   1.000% Irena Kostetsky             1.000% Olqa Hirsch                   0.750%

## Character and Competence

- FACILITIES REVIEWED:

- Residential Health Care Facilities

- Avalon Gardens Rehab & HCC
- Bay Park Center for Nursing and Rehabilitation
- Bayview Nursing & Rehab Center
- Nassau Extended Care Facility

- 05/2003 to present
- 04/2009 to present
- 04/2003 to present
- 07/2004 to present

Nathan Miller Center for Nursing	01/2004 to 02/2011
Park Avenue Extended Care Facility	07/2004 to present
The Hamptons Center for Rehab and Nursing	11/2007 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation and Nursing	07/2004 to present
White Plains Center for Nursing	01/2004 to present

- **INDIVIDUAL BACKGROUND REVIEW:**

**Moshe Sirkis** is the president of Sirmo Services, a brokerage firm in Brooklyn, New York. He has disclosed ownership interest in the following residential health care facilities:

Nausau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation and Nursing	07/2004 to present

**Benjamin Fishoff** was the president of Inter-Ocean Corporation, an electronics import and export company. He is now retired. He has disclosed ownership interest in the following residential health care facilities:

The Hamptons Center for Rehab and Nursing	11/2007 to present
Bay Park Center for Nursing and Rehabilitation	04/2009 to present
Nassau Extended Care Facility	08/2009 to present
Park Avenue Extended Care Facility	08/2009 to present
Throgs Neck Extended Care Facility	08/2009 to present
Townhouse Center for Rehabilitation and Nursing	08/2009 to present

**Jerome Weinstock** is NYS licensed attorney and is in good standing. He discloses no ownership interest in health facilities.

**Meryl Gros** was a member of the executive staff at Inter-Ocean Corporation, an electronics import and export company. She is now retired. She discloses no ownership interest in health facilities.

**Naomi Tessler** is a New York State licensed and registered pharmacist and is in good standing. She discloses no ownership interest in Residential Health Care Facilities.

**Abraham Fishoff** is the CFO and CEO of City Lights, a real estate development firm. He discloses no ownership interest in health facilities.

**Barbara Gold** has no employment history and discloses no ownership interest in health facilities.

**Nachum Sherman** is a New York State licensed CPA, license number 040710, and is in good standing. He has disclosed ownership interest in the following residential health care facilities:

White Plains Center for Nursing	01/2004 to present
Nathan Miller Center for Nursing	01/2004 to 02/2011

**Alan Chopp** holds a New York State Nursing Home Administrator's License, license number 01986, for which he is currently registered and in good standing. He has disclosed ownership interest in the following residential health care facilities:

Avalon Gardens Rehab & HCC	05/2003 to present
Bayview Nursing & Rehab Center	04/2003 to present

**Irina Kostetsky** is a partner in Century Medical and Dental, Inc., an Article 28 medical and dental facility. She has disclosed ownership interest in the following residential health care facilities:

Nassau Extended Care Facility  
Park Avenue Extended Care Facility  
Throgs Neck Extended Care Facility  
Townhouse Extended Care Center

07/2004 to present  
07/2004 to present  
07/2004 to present  
07/2004 to present

**Olga Hirsch** is retired and has no employment history over the last 10 years. She discloses no ownership interest in health facilities.

**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 Nassau Extended Care Facility, Park Avenue Extended Care Facility, Throgs Neck Extended Care Facility, Townhouse Extended Care Center, White Plains Center for Nursing, and the Nathan Miller Center for Nursing 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 Hamptons Center for Rehab and Nursing for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) – Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.12 – Quality of Care; 10 NYCRR 415.12(h)(2) – Quality of Care: Accidents and 10 NYCRR 415.26 – Organization and Administration.
- The facility was fined \$4,000 pursuant to a Stipulation and Order for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) – Quality of Care: Accidents and Supervision and 415.26 – Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 – Provide Care/Services for Highest Well Being.

A review of operations for the Hamptons Center for Rehab and Nursing 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 Avalon Gardens 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 May 23, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(1) & (2) – Quality of Care: Accidents.
- The facility was fined \$4,000 pursuant to a Stipulation and Order for surveillance findings on July 29, 2011. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care: Highest Practicable Potential; 10 NYCRR 415.26 – Administration.

A review of operations for the Avalon Gardens 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 Bayview Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$7,000 pursuant to a Stipulation and Order for surveillance findings on November 16, 2004. Deficiencies were found under: 10 NYCRR 415.5(h)(2) – Quality of Life: Environment; 10 NYCRR 415.12 – Quality of Care; 10 NYCRR 415.12(c)(1) – Quality of Care: Pressure Sores and 10 NYCRR 415.12(h)(2) – Quality of Care: Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on December 2, 2005. Deficiencies were found under 10 NYCRR 415.11(c)(3) – Comprehensive Care Plans.
- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on December 7, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) – Quality of Care: Pressure Sores.

A review of operations for the Bayview 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 Bay Park Center for Nursing and Rehabilitation for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care: Highest Practicable Potential and 10 NYCRR 415.12(i)(1) – Quality of Care: Nutrition Status.
- The facility was fined \$18,000 pursuant to a Stipulation and Order for surveillance findings on February 16, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) – Resident Behavior and Facility Practices: Staff Treatment of Residents (Freedom from Resident Abuse); 10 NYCRR 415.4(b) – Resident Behavior and Facility Practices: Staff Treatment of Residents (Development of Resident Abuse Policies); 10 NYCRR 415.12(h)(2) – Quality of Care: Accidents; 10 NYCRR 415.26(c)(1)(iv) – Nurse Aide Competency; and 10 NYCRR 415.12(i)(1) – Quality of Care: Nutrition. It should be noted that this last enforcement was not considered to be a repeat enforcement from the survey dated December 18, 2009.

A review of operations for the Bay Park Center for Nursing and Rehabilitation for the period identified above results in a conclusion of substantially consistent high level of care, since there were no repeat enforcements.

#### Project Review

No changes in the program or physical environment are proposed in this application.

#### Recommendation

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

## Financial Analysis

#### Financial Summary

The transfer of membership percentages and the purchase prices are as follows:

Benjamin Landa proposes to transfer 21.325% of his 22.75% percentage interest in the Company to the following individuals for the following purchase prices:

<u>Transferee</u>	<u>Interest</u>	<u>Purchase Price</u>
Alan Chopp	1.00%	\$113,340
Benjamin Fishoff	7.525%	\$100
Meryl Gross	3.80%	\$103,505
Nachum Sherman	1.5%	\$105,214
Moshe Sirkus	4.5%	\$328,947*
Naomi Tessler	3.0%	\$210,428

*\* Moshe Sirkus has already paid for his ownership interests.*

Deborah Philipson proposes to transfer 15.75% of her 22.75% percentage interest in the Company to the following individuals for the following purchase prices:

<u>Transferee</u>	<u>Interest</u>	<u>Purchase Price</u>
Martin Farbenblum	3.0%	\$236,533
Abraham Fishoff	2.4%	\$103,505*
Barbara Gold	2.4%	\$103,505*
Irina Kostetsky	1.0%	\$78,844
Benjamin Landa	.45%	\$100
Moshe Sirkus	4.5%	\$328,947
Jerome Weinstock	2.0%	\$100

*\* Abraham Fishoff and Barbara Gold have already paid their ownership interests.*

The Estate of Leopold Hirsch proposes to transfer his 8.0% percentage interest in the Company to the following individuals for the following purchase prices:

<u>Transferee</u>	<u>Interest Transferred</u>	<u>Purchase Price</u>
Olga Hirsch	.75%	\$51,324
Benjamin Landa	7.25%	\$100

Jordan Hirsch proposes to transfer 3.0% of his 4.0% percentage interest to Benjamin Landa for \$100.

David Fried proposes to transfer all of his 1.0% percentage interest to Benjamin Landa resulting in his withdrawal as a member of the Company for \$61,537

Regina Weinstock proposes to transfer 4.0% of her 8.0% percentage interest to Jerome Weinstock for \$100.

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

#### Purchase and Transfer Agreement

The applicant has submitted eighteen executed purchase and transfer agreements for the change in ownership of Eastchester Rehabilitation and Health Care Center, LLC, the terms of which are summarized below:

<i>Purpose:</i>	The transfer of 21.325% of the ownership of Eastchester Rehabilitation and Health Care Center	<u>Interest Transferred</u>	<u>Purchase Price</u>
<i>Seller/Transferor:</i>	Benjamin Landa		
<i>Purchaser/Transferee:</i>	Alan Chopp	1.00%	\$113,340
	Benjamin Fishoft	7.525%	\$100
	Meryl Gross	3.80%	\$103,505
	Nachum Sherman	1.50%	\$105,214
	Moshe Sirkus	4.50%	*\$328,947
	Naomi Tessler	3.0%	\$210,428

<i>Purpose:</i>	The transfer of 15.75% of the ownership of Eastchester Rehabilitation and Health Care Center	<u>Interest Transferred</u>	<u>Purchase Price</u>
<i>Seller/Transferor:</i>	Deborah Philipson		
<i>Purchaser/Transferee:</i>	Martin Farbenblum	3.0%	\$236,533
	Abraham Fishoff	2.4%	*\$103,505
	Barbara Gold	2.4%	*\$103,505
	Irina Kostetsky	1.0%	\$78,844
	Benjamin Landa	.45%	\$100
	Moshe Sirkus	4.50%	\$328,947
	Jerome Weinstock	2.00%	\$100

<i>Purpose:</i>	The transfer of 8.00% of the ownership of Eastchester Rehabilitation and Health Care Center	<u>Interest Transferred</u>	<u>Purchase Price</u>
<i>Seller/Transferor:</i>	Estate of Leopold Hirsch		
<i>Purchaser/Transferee:</i>	Olga Hirsch	.75%	\$51,324
	Benjamin Landa	7.25%	\$100

<i>Purpose:</i>	The transfer of 3.0% of the ownership of Eastchester Rehabilitation and Health Care Center	<u>Interest Transferred</u>	<u>Purchase Price</u>
<i>Seller/Transferor:</i>	Benjamin Landa		
<i>Purchaser/Transferee:</i>	Jordan Hirsch	3.0%	\$100
<i>Purpose:</i>	The transfer of 1.0% of the ownership of Eastchester Rehabilitation and Health Care Center	<u>Interest Transferred</u>	<u>Purchase Price</u>
<i>Seller/Transferor:</i>	David Fried		
<i>Purchaser/Transferee:</i>	Benjamin Landa	1.0%	\$61,537
<i>Purpose:</i>	The transfer of 4.0% of the ownership of Eastchester Rehabilitation and Health Care Center, LLCT	<u>Interest Transferred</u>	<u>Purchase Price</u>
<i>Seller/Transferor:</i>	Regina Weinstock		
<i>Purchaser/Transferee:</i>	Jerome Weinstock	4.00%	\$100

\* Moshe Sirkus, Abraham Fishoff and Barbara Gold have already paid for their ownership interests.

#### Capability and Feasibility

The issue of capability is centered on the purchaser's ability to meet the purchase price that the new members and one of the existing members is responsible for in acquiring of ownership interests. The purchasers will provide equity from their personal net worth statements to meet the purchase price. Presented as BFA Attachment A is a summary of the members personal net worth statements, which indicates the availability of sufficient funds for the equity contribution.

There are no significant issues of feasibility associated with this application, since there is no change in the facility operations. 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. Presented as BFA Attachment B, is a financial summary of Eastchester Rehabilitation and Health Care Center. As shown on Attachment B, the facility had an average negative working capital position and an average positive net asset position from 2009 through 2011. The applicant has indicated that the negative working capital position is due to the facility's liability of \$4,249,886 to the related realty listed on the 2011 interim financial statement. Also, the facility achieved an average net income of \$923,761 from 2009 through 2011.

Presented as BFA Attachment C, is a financial summary of White Plains Center for Nursing. As shown, the facility had an average negative working capital position and an average positive net asset position from 2009 through 2011. Also, the facility achieved an average net income of \$453,221 from 2009 through 2011. The facility lost \$503,447 in 2010, which was the result of a drop in Medicare census from 2009 to 2010, along with a concurrent drop in Medicare revenues (approximately \$2.4 million). The facility improved its Medicare census in 2011, which led to improve operations.

Presented as BFA Attachment D, is a financial summary of Nassau Extended Care Facility. As shown, the facility had an average positive working capital position and an average positive net asset position from 2009 through November 30, 2011. Also, the facility achieved an average net income of \$782,072 from 2009 through November 30, 2011.

Presented as BFA Attachment E, is a financial summary of Park Avenue Extended Care Facility. As shown, 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 net income of \$445,604 from 2009 through 2011.

Presented as BFA Attachment F, is a financial summary of Throgs Neck Extended Care Facility. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of \$59,927 from 2009 through November 30, 2011. The entity incurred a net loss of \$352,724 through November 30, 2011. The applicant has indicated that the negative working capital position is due to the facility's liability of \$890,656 in related party loans. The reasons for the losses were general and administrative expenses of \$1,260,688 in administrative fees paid to related companies and Medicare prior period reduction of \$637,041.

Presented as BFA Attachment G, is a financial summary of Townhouse Extended Care Facility. As shown, 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 net income of \$419,658 from 2009 through 2011.

Presented as BFA Attachment H is a financial summary of The Hampton Center for Rehab & Nursing. As shown, the facility had an average negative working capital position and an average negative net asset position from 2009 through November 30, 2011. Also, the facility incurred an average net loss of \$223,764 from 2009 through November 30, 2011. The applicant has indicated that the reason for the negative working capital position is due to the 2011 Medicaid rate cut and recoupment, which reduced the facility's cash flow. The members, moreover, loaned money to the facility to cover working capital needs which, in turn, contributed to the negative working capital by increasing the facility's liabilities. The facility incurred a net loss of \$5,794,627 in 2009, which was the result of operating on a budgeted rate. In 2010, the facility received a cost based rate and implemented steps to improve operations by reducing expenses by over \$2.5 million.

Presented as BFA Attachment I, is a financial summary of Avalon Gardens Rehab & HCC. As shown, the facility had an average negative working capital position and an average positive net asset position from 2009 through 2011.

The applicant has indicated that the reason for the negative working capital position is due to the 2011 Medicaid rate reduction and recoupment which reduced the facility's cash flow. The members, moreover, loaned money to the facility to cover working capital needs which, in turn, contributed to the negative working capital by increasing the facility's liabilities. Also, the facility achieved an average net income of \$1,291,164 from 2009 through 2011.

Presented as BFA Attachment J, is a financial summary of Bayview Nursing & Rehab Center. As shown, the facility had an average negative working capital position and an average positive net asset position from 2009 through 2011. The applicant has indicated that the negative working capital position is due to the 2011 retroactive Medicaid rate change of \$263,482. Also, the facility achieved an average net income of \$1,775,922 from 2009 through 2011.

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

Recommendation

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

## Attachments

BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Financial Summary - Eastchester Rehabilitation and Health Care Center
BFA Attachment C	Financial Summary - White Plains Center for Nursing
BFA Attachment D	Financial Summary - Nassau Extended Care Facility

BFA Attachment E	Financial Summary - Park Avenue Extended Care Facility
BFA Attachment F	Financial Summary - Throgs Neck Extended Care Facility
BFA Attachment G	Financial Summary - Townhouse Extended Care Facility
BFA Attachment H	Financial Summary - The Hampton Center for Rehab & Nursing
BFA Attachment I	Financial Summary - Avalon Gardens Rehab & HCC
BFA Attachment J	Bayview Nursing & Rehab 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 6th day of December, 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 membership ownership; add eleven new members, delete two (2) existing members and increase the percentage interest of one (1) existing member, 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:

121191 E

FACILITY/APPLICANT:

Eastchester Rehabilitation and Health Care  
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 # 122095-E Queens Boulevard Extended Care Facility Management, LLC d/b/a Queens Boulevard Extended Care Facility

**County:** Queens (Woodside)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** August 17, 2012

### Executive Summary

#### Description

Queens Boulevard Extended Care Facility Management LLC d/b/a Queens Boulevard Extended Care Facility requests approval to be established as the operator of Queens Boulevard ECF, Inc., a 280-bed proprietary residential health care facility (RHCF) with a 30-slot adult day health care program (ADHCP), located at 61-11 Queens Boulevard, Woodside. Ownership of the operation before and after the requested change is as follows:

<b>Current</b>	
<i>Queens Boulevard ECF, Inc.</i>	
MEMBERS:	
-- Anthony Clemenza, Jr.	(4.99%)
-- James Clemenza	(4.99%)
-- Anthony Clemenza, Sr.	(90.02%)
<b>Proposed</b>	
<i>Queens Boulevard Extended Care Facility Management, LLC.</i>	
MEMBERS:	
-- Anthony Clemenza, Jr.	(50.00%)
-- James Clemenza	(50.00%)

Queens Boulevard Extended Care Facility Management, LLC will enter into a lease agreement with Queens Boulevard Extended Care Facility Corp., whose membership is the same as Queens Boulevard ECF, Inc.

DOH Recommendation  
Contingent approval.

#### Need Summary

Occupancy rates for Queens Boulevard Extended Care Facility from 2008 through 2010 were 96.85%,

94.69%, and 95.76%, respectively. The facility was below the 75 percent regional planning average for Medicaid in 2009 and 2010, with admissions of 3.61% and 17.64%, respectively. The 75 percent averages for Queens County were 12.95% in 2009 and 27.87% in 2010.

#### Program Summary

No negative information has been received concerning the character and competence of the above applicants identified as new members. A review of operations for Queens Boulevard Extended Care Facility Corp. for the periods identified above, results in a conclusion of a substantially consistent high level of care since there were no enforcements.

No changes in the program or physical environment are proposed in this application.

#### Financial Summary

There are no project costs associated with this application. Total asset purchase price of \$3,000,000 will be met with a promissory note at an interest rate of 5.6% over ten years.

Budget:	<i>Revenues:</i>	\$ 36,729,048
	<i>Expenses:</i>	<u>34,439,667</u>
	<i>Gain/(Loss):</i>	\$ 2,289,381

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. 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:
    - o Information on activities relating to a-c above; and
    - o Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - o 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]

3. Submission of an executed working capital loan agreement that is acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note that is acceptable to the Department. [BFA]
5. Submission of a photocopy of the revised Certificate of Amendment of the Articles of Organization of Queens Boulevard Extended Care Facility Management, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Operating Agreement of Queens Boulevard Extended Care Facility Management, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the fully executed Agreement of Lease between the applicant and Queens Boulevard Extended Care Facility Corp., acceptable to the Department. [CSL, BFA]
8. Submission of a photocopy of the fully executed Certificate of Amendment of the Certificate of Incorporation of Queens Boulevard Extended Care Facility Corp., acceptable to the Department. [CSL]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

Queens Boulevard ECF, Inc. is a 280-bed proprietary residential health care facility (RHCF) with a 30-slot adult day health care program (ADHCP), located at 61-11 Queens Boulevard, Woodside.

Occupancy rates for Queens Boulevard Extended Care Facility were 96.85 percent, 94.69 percent, and 95.76 percent, respectively. The facility was below the 75 percent regional planning average for 2009 and 2010 for Medicaid, with admissions of 3.61 percent and 17.64 percent, respectively. The 75 percent averages for Queens County were 12.95 percent in 2009 and 27.87 percent in 2010.

### Analysis

Queens Boulevard Extended Care's occupancy rate of 96.85 percent in 2008, and 95.76 percent in 2010 exceeded the NYC and Queens County planning area rate for those years and was only slightly below the NYC and Queens County rate for 2009, as indicated below:

<b><u>RHCF Occupancy</u></b>	<b><u>2008</u></b>	<b><u>2009</u></b>	<b><u>2010</u></b>
Queens Boulevard Extended Care Facility Inc.	96.85%	94.69%	95.76%
Queens County	93.95%	94.84%	94.82%
NYC Region	94.51%	95.01%	94.77%

The 2016 Projected Bed Need for NYC Region is 51,07, as indicated below:

<b><u>RHCF Bed Need</u></b>	<b><u>New York City</u></b>
2016 Projected Need	51,071
Current Beds	43,065
Beds Under Construction	349
Total Resources	43,414
Unmet Need	7,657

<b><u>Medicaid Utilization</u></b>	<b><u>2009 Average</u></b>	<b><u>2010 Average</u></b>
Queens Boulevard Extended Care Facility Inc.	3.61%	17.64%
Queens County	12.95%	27.87%

### 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.

Queens Boulevard Extended Care did not exceed the 75 percent planning average for 2009 and 2010 with reported Medicaid admissions of 3.61 percent in 2009 and 17.64% in 2010. The 75 percent planning averages for Queens County for 2009 and 2010 were 12.95 percent and 27.87 percent, respectively.

### Recommendation

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

# Programmatic Analysis

## Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Queens Boulevard Extended Care Facility	Same
<i>Address</i>	61-11 Queens Boulevard Woodside, NY. 11377	Same
<i>RHCF Capacity</i>	280	Same
<i>ADHHC Program Capacity</i>	30	30
<i>Type Of Operator</i>	Corporation	LLC
<i>Class Of Operator</i>	Proprietary	Proprietary
<i>Operator</i>	Queens Boulevard Extended Care Facility Corp.  <u>Members:</u> Anthony Clemenza .....90.02% Anthony Clemenza, Jr.....4.99% James Clemenza.....4.99%	Queens Boulevard Extended Care Facility Management, LLC  <u>Managing Members:</u> Anthony Clemenza, Jr. ....50% James Clemenza.....50%

## Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

Queens Boulevard Extended Care Facility

10/2002 to present

- INDIVIDUAL BACKGROUND REVIEW:

**Anthony Clemenza, Jr.** is a NYS licensed attorney and is in good standing. He serves as vice president and General Counsel to Queens Boulevard Extended Care Facility Corp. He has disclosed ownership interest in the following residential health care facility:

Queens Boulevard Extended Care Facility Corp.

01/2006 to present

**James Clemenza** serves as treasurer and Director of Maintenance and Purchasing to Queens Boulevard Extended Care Facility Corp. He has disclosed ownership interest in the following residential health care facility:

Queens Boulevard Extended Care Facility Corp.

01/1995 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 operations for **Queens Boulevard Extended Care Facility Corp.** for the periods identified above, results in a conclusion of a substantially consistent high level of care since there were no enforcements.

## Project Review

No changes in the program or physical environment are proposed in this application.

## Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

<i>Date:</i>	April 17, 2012
<i>Seller:</i>	Queens Boulevard ECF, Inc.
<i>Buyer:</i>	Queens Boulevard Extended Care Facility Management, LLC.
<i>Assets Transferred:</i>	All of the assets related to the Facility of every type and description, real, personal, tangible and mixed, except the excluded assets.
<i>Excluded Assets:</i>	All the real property, including the land, building and building improvements, all real property leases of Seller and all contracts relating solely to the real property, all leasehold improvements, equipment, furniture, fixtures, machinery, computers, servers, ancillary equipment and other tangible assets owned or leased by Seller, the mortgages, any insurance policies relating to the real property, all original corporate minute books, stock ledgers and other corporate governance documents and all original tax records.
<i>Assumed Liabilities:</i>	All liabilities of the Seller of any kind or nature, except the excluded liabilities.
<i>Excluded Liabilities:</i>	Claims, lawsuits, trade payables and other debts or obligations of Seller or the Facility incurred or existing on or prior to the closing.
<i>Purchase Price:</i>	\$3,000,000
<i>Payment:</i>	Promissory note @ 5.6% over 10 years.

The facility's equipment is owned by the realty entity and is part of the debt service obligation, which is the basis for the lease agreement. The applicant has submitted a draft promissory note agreement between Anthony Clemenza Sr. and his two sons, who are the proposed members. Presented as BFA Attachment B is the net worth statement of Anthony Clemenza Sr., which shows sufficient funds available.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law, with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liabilities and responsibilities.

### Lease Rental Agreement

The applicant has submitted a proposed lease agreement, the terms of which are summarized below:

<i>Landlord:</i>	Queens Boulevard Extended Care Facility Corp.
<i>Lessee:</i>	Queens Boulevard Extended Care Facility Management, LLC.
<i>Premises:</i>	All buildings, structures, fixtures and equipment located at 61-11 Queens Boulevard, Woodside.
<i>Rental</i>	\$2,248,532/year
<i>Term:</i>	15 years with the option to renew for an additional 15 years.
<i>Provisions:</i>	The lessee shall be responsible for insurance, utilities and maintenance.

The lease agreement is between related parties and is therefore a non-arm's length agreement. The lease payments are equal to debt service on the mortgage without any mark-up.

### Operating Budget

The applicant submitted an operating budget for the RHCF in 2012 dollars, for the first year subsequent to change in ownership:

## RHCF

Revenues:	\$35,538,666
Expenses:	
Operating:	\$32,215,966
Capital:	<u>1,167,229</u>
Total Expenses:	\$33,383,195
Net Income:	\$2,155,471
Utilization: (days)	97,486
Occupancy:	95.4%

The following is noted with respect to the submitted RHCF operating budget:

- Expenses include lease rental.
- Medicare and private pay assume current rates of payment.
- Medicaid rate is based on the facilities 2012 Medicaid rate published by DOH.
- Utilization by payor source for year one is expected as follows:

Medicare Fee-for-Service	17%
Medicaid Fee-for-Service	62%
Private Pay	21%

- Breakeven occupancy is projected at 92.4%

## ADHCP

Revenues:	\$1,190,382
Expenses:	<u>1,056,472</u>
Net Income:	\$133,910

Utilization for the ADHC is expected to be 98.5% Medicaid Fee-for-Service and 1.5% Private Pay.

The combined projected revenues and expenses for Queens Boulevard Extended Care Facility for the first year subsequent to the change in operator are as follows:

## Total Budget

Revenue:	\$36,729,048
Expenses:	<u>34,439,667</u>
Net Income:	\$2,289,381

## Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$3,000,000 will be met with a promissory note at an interest rate of 5.6% over ten years. The applicant has submitted a draft promissory note agreement between Anthony Clemenza, Sr. and his two sons, who are the proposed members. Presented as BFA attachment B is the net worth statement of Anthony Clemenza, Sr., which shows sufficient funds available.

Working capital contributions are estimated at \$5,739,945 based on two months of first year expenses. The applicant will fund \$4,019,359 of working capital from operations with net cash and receivables (minus accounts payable) as of December 31, 2011, resulting in a need for additional equity of \$1,720,586 from the proposed members. The applicant will finance \$860,293 of working capital at an interest rate of 5.6% over 5 years, for which a letter of interest has been provided by Anthony Clemenza, Sr.

Presented as BFA Attachment B, the net worth statement of Anthony Clemenza, Sr., which shows sufficient funds available. The remaining \$860,293 will be provided as equity from the proposed members. Presented as BFA Attachment A, is the net worth statements of the proposed members, which indicates the availability of sufficient funds. Presented as BFA Attachment C, is the pro-forma balance sheet of Queens Boulevard Extended Care Facility Management, LLC as of the first day of operation. As shown, the facility will initiate operation with \$3,466,082 members' equity. It is noted that assets include \$3,000,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus members' equity would be \$466,082. The submitted budget indicates a net income of \$2,289,381 for the first year subsequent to change in ownership. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with a cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

Review of Attachment D, financial summary of Queens Boulevard Extended Care Facility Corp., indicates the facility has maintained positive working capital, positive stockholder's equity, and generated average positive net income of \$2,937,620 for the period shown.

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

Recommendation

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

## Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members
BFA Attachment B	Personal Net Worth Statement of Anthony Clemenza, Sr.
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary, Queens Boulevard Extended Care Facility, Corp.

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 6th day of December, 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 Queens Boulevard Extended Care Facility Management, LLC as the new operator of Queens Boulevard Extended Care Facility, Inc. , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

122095 E

FACILITY/APPLICANT:

Queens Boulevard Extended Care Facility  
Management, LLC d/b/a Queens Boulevard  
Extended Care 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. [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:
    - o Information on activities relating to a-c above; and
    - o Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - o 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]

3. Submission of an executed working capital loan agreement that is acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note that is acceptable to the Department. [BFA]
5. Submission of a photocopy of the revised Certificate of Amendment of the Articles of Organization of Queens Boulevard Extended Care Facility Management, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Operating Agreement of Queens Boulevard Extended Care Facility Management, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of the fully executed Agreement of Lease between the applicant and Queens Boulevard Extended Care Facility Corp., acceptable to the Department. [CSL, BFA]
8. Submission of a photocopy of the fully executed Certificate of Amendment of the Certificate of Incorporation of Queens Boulevard Extended Care Facility Corp., acceptable to the Department. [CSL]



APPROVAL CONDITIONAL UPON:

N/A

Documentation submitted to satisfy the above-referenced contingencies (4 copies) should be submitted within sixty (60) days to:

Mr. Keith McCarthy  
Acting Director  
Bureau of Project Management  
NYS Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, New York 12237



# Public Health and Health Planning Council

Project # 121347-E

**Hollis Operating Company, Inc.**  
**d/b/a Holliswood Center for Rehabilitation and Healthcare**

**County:** Queens (Hollis)  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** April 26, 2012

## Executive Summary

### Description

Hollis Operating Company, LLC d/b/a Holliswood Center for Rehabilitation and Healthcare, requests approval to be established as the new operator of Holliswood Care Center, Inc., an existing 314-bed proprietary residential health care facility (RHCF) located at 195-44 Woodhull Avenue, Hollis. Holliswood Care Center, Inc. entered into an asset purchase agreement with Hollis Operating Co., LLC, on November 1, 2010. A separate real estate company, Hollis Real Estate Co., LLC, will acquire the facility's property. Ownership of the operation before and after the requested change is as shown follows:

<u>Before</u>	
<i>Holliswood Care Center, Inc</i>	
<b>MEMBERS:</b>	
-- Veena Ahuja	90.5%
-- Kenneth Rozenberg	9.5%
<u>After</u>	
<i>Hollis Operating Co., LLC d/b/a Holliswood Center for Rehabilitation and Healthcare (the Center)</i>	
<b>MEMBERS:</b>	
-- Kenneth Rozenberg	70.00%
-- Shelly Lerner	10.00%
-- Reuven Kaufman	10.00%
-- Jeremy Strauss	7.50%
-- Jeffrey Sicklick	2.50%

Several of the proposed members have ownership interest in additional RHCF facilities, including: Holliswood Care Center, Dutchess Center for Rehabilitation, University Nursing Home, Wartburg Lutheran Home for the Aging, Queens Center for Rehabilitation, Brooklyn Center for Rehabilitation, Suffolk Center for Rehabilitation, Boro Park Center for

Rehabilitation, Bushwick Center for Rehabilitation, Rome Center for Rehabilitation, Chittenango Center for Rehabilitation, Williamsbridge Manor and Bronx Center for Rehabilitation and Health.

DOH Recommendation  
Contingent approval.

Need Summary  
Holliswood Care Center's occupancy for 2008, 2009, and 2010 was 75.99%, 75.79%, and 75.07% respectively. Occupancy has increased for the first half of 2012 to 96.2%. There will be no change in capacity as a result of this project.

Program Summary  
No negative information has been received concerning the character and competence of the applicants identified as new members. No changes in the program or physical environment are proposed in this application.

Financial Summary  
The facility's assets have been sold in accordance with the Asset Purchase Agreement effective November 1, 2010. There are no project costs associated with this proposal.

Budget:	<i>Revenues:</i>	\$ 25,457,957
	<i>Expenses:</i>	<u>22,945,422</u>
	<i>Gain/(Loss):</i>	\$ 2,512,535

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval contingent upon:**

1. The 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 Department reserves the right to require continued reporting beyond the two year period. [RNR]

3. Submission of a Loan commitment for working capital that is acceptable to the Department. [BFA]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

Hollis Operating Co., LLC, d/b/a Holliswood Center for Rehabilitation and Healthcare, proposes to acquire Holliswood Care Center, Inc., a 314 bed residential health care facility, located at 195-44 Woodhull Avenue, Hollis, 11423, in Queens County.

### Analysis

Holliswood Care Center's occupancy of 75.99% in 2008, 75.79% in 2009, and 75.07% did not exceed the Department's planning optimum of 97% as indicated in the table below. However, occupancy has increased to 96.2% for the first half of 2012.

<u>RHCF Occupancy</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Holliswood Care Center	75.99%	75.79%	75.07%
Queens County	93.95%	94.85%	94.82%
New York City Region	94.51%	95.01%	94.77%

The 2016 Projected Bed Need for the New York City Region is 51,071 with a total RHCF resource of 43,422 beds, resulting in an unmet need of 7,649 beds.

<u>RHCF Bed Need</u>	<u>New York City</u>
2016 Projected need	51,071
Current Beds	43,343
Beds under Construction	79
Total Resources	43,422
Unmet Need	7,649

Although the RHCF occupancy rates for both Queens County and the five boroughs of New York City as a whole are below the planning optimum of 97 percent, the fact that Holliswood's occupancy of 96.2 percent through the first half of 2012 exceeded the annual occupancy rates for Queens and New York City shows that the facility is experiencing better utilization and serving as a resource to the community.

### 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.

Holliswood Care Center's was above the 75 percent planning average for 2009 and 2010. The facility reported Medicaid admissions of 30.84 percent and 82.43 percent in 2009 and 2010 respectively. The 75 percent planning averages for Queens County were 12.95 percent in 2009 and 27.87 percent in 2010.

### Recommendation

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

## Programmatic Analysis

### Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Holliswood Center for Rehabilitation and Healthcare	Same
<i>Address</i>	195-44 Woodhull Avenue Hollis, NY. 11423	Same
<i>RHCF Capacity</i>	314	Same
<i>ADHC Program Capacity</i>	N/A	N/A
<i>Type Of Operator</i>	Corporation	LLC
<i>Class Of Operator</i>	Proprietary	Proprietary
<i>Operator</i>	Holliswood Care Center, Inc.  Members Veena Ahuja.....90.5% Kenneth Rozenberg.....9.5%	Hollis Operating Co., LLC  Managing Member Kenneth Rozenberg.....70%  <u>New Members</u> Shelly Lerner.....10% Reuven Kaufman.....10% Jeremy Strauss.....7.5% Jeffrey Sicklick.....2.5%

### Character and Competence

- FACILITIES REVIEWED:

Residential Health Care Facilities

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	11/2002 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Dutchess Center for Rehabilitation and Healthcare	01/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	01/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge Health and Rehabilitation Center - Chittenango	07/2008 to 04/2011
Stonehedge Health and Rehabilitation Center - Rome	07/2008 to 04/2011
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
University Nursing Home	11/2002 to present
Wartburg Lutheran Home for the Aging	06/2008 to 05/2011
Waterfront Health Care Center, Inc.	08/2011 to present
Williamsbridge Manor Nursing Home	11/2002 to present

<u>Certified Home Health Agency</u> Alpine Home Health Care	07/2008 to present
<u>Licensed Home Care Services Agency</u> Amazing Home Care	05/2006 to present
<u>Emergency Medical Services</u> Senior Care EMS	05/2005 to present

- INDIVIDUAL BACKGROUND REVIEW:

**Kenneth Rozenberg** is a licensed nursing home administrator in good standing, and also a licensed New York State Paramedic in good standing. Mr. Rozenberg has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January, 1998. Mr. Rozenberg discloses the following health facility interests:

Williamsbridge Manor Nursing Home	11/1996 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
University Nursing Home	08/2001 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Stonehedge Health & Rehabilitation Center - Rome (receiver)	07/2008 to 04/2011
Stonehedge Health & Rehabilitation Center - Chittenango (receiver)	07/2008 to 04/2011
Rome Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Wartburg Lutheran Home for the Aging (receiver)	06/2008 to 05/2011
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare (receiver)	11/2010 to present
Waterfront Health Care Center, Inc. (receiver)	08/2011 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present

**Jeremy B. Strauss** has been employed as Executive Director of Dutchess Center for Rehabilitation since April, 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
Rome Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Senior Care Emergency Ambulance Services, Inc.	04/2011 to present

**Jeffrey N. Sicklick** is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator of Record at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick previously served as Administrator of Record at Queens Center for Rehabilitation from

June, 2004 to August, 2004 and Dutchess Center for Rehabilitation from May, 2003 to September, 2003. Mr. Sicklick discloses the following health facility interests:

Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Queens Center for Rehabilitation and Residential Health Care	07/2007 to present
Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present

**Shelly Lerner** is a housewife and has volunteered at local nursing homes. She discloses no employment history over the last 10 years and discloses no ownership interest in health facilities.

**Reuven Kaufman** is the president and owner of Reuven Kaufman, Inc., a diamond exporter and wholesaler. He discloses no ownership interest in health facilities.

**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 Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- Williamsbridge Manor Nursing Home was fined \$1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of operations of Stonehedge Health and Rehabilitation Center – Chittenango (receivership), for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

A review of the operations of Chittenango Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation and Health Care, and Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health and Rehabilitation Center at Chittenango) for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of University Nursing Home, Dutchess Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging), Boro Park Center for Rehabilitation and Healthcare, Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health and Rehabilitation Center at Rome), Suffolk Center for Rehabilitation and Nursing, Holliswood Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Richmond Center for Rehabilitation and Specialty Healthcare, and Waterfront Health Care Center, Inc. for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

#### Project Review

No changes in the program or physical environment are proposed in this application.

#### Recommendation

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

## Financial Analysis

#### Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

<i>Date:</i>	November 1, 2010
<i>Seller:</i>	Holliswood Care Center, Inc
<i>Purchaser:</i>	Hollis Operating Co., LLC
<i>Purchased Assets:</i>	All of the seller's right, title and interest in the business and operation of the facility, all leasehold improvements, furniture, fixtures and equipment owned or leased by seller, all inventory, supplies and other articles of personal property except for the excluded assets. All contracts, agreements, leases, undertakings, commitments and other arrangements except for excluded assets, all residents funds held in trust, the name "Holliswood Care Center" and all other trade names, logos, marks and services marks associated with the facility. All security deposits and prepayments for future services. All menus, financial books and records, policies and procedures manuals, resident/patient records relating to the facility, all employee and payroll records, goodwill and copies of all other books and records relating to the facility and computer software. All phone and fax number, To the extent transferrable all licenses and permits relating to the ownership or operation of the facility as well as the Medicare and Medicaid provider numbers and the provider agreements. All accounts receivable, the leases all cash deposits and cash equivalents, all assets of seller existing on or after the date hereof, other than excluded assets.
<i>Excluded Assets:</i>	Real Estate, all accounts receivable regardless of when billed, relating to services prior to the closing. All marketable securities and accrued interest and dividends prior to closing.
<i>Liabilities Assumed:</i>	All liabilities and obligations exclusively arising with respect to the operation of the facility and/or basic assets on and after the date hereof with respect to ownership and or operation of the facility, including but not limited to healthcare, Medicare and Medicaid overpayment and assessment liabilities



and obligations exclusively relating to services rendered by the facility on and after the date hereof, the balance sheet liabilities limited to the specific liabilities and amounts therefore as set forth therein and all cobra obligations of seller relating to the termination of employment of any employee employed by seller. Except as expressly provided, buyer shall not be responsible for any other obligations or liabilities of seller or the facility. Buyer shall not assume, nor be responsible or otherwise liable, for anything relating to or arising out of any collective bargaining or other labor or union contracts or agreements relating to the facility.

*Purchase Price:* \$ 864,249 which is attributable to assets exceeding liabilities on the facilities current balance sheet, this amount can be adjusted though if any accounts receivable are written off prior to closing.

*Payment of Purchase Price:* Payable at closing from members' equity.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities.

The member of the reality entity; Hollis Real Estate Co., LLC, is as follows:

<u>Proposed Members</u>	<u>Percentage Ownership</u>
Daryl Hagler	100%

#### Lease Agreement and Medicaid Capital Reimbursement

Facility occupancy will continue to be subject to a lease agreement, the terms of which are summarized as follows:

*Date:* April 23, 2012  
*Premises:* 314 bed proprietary residential health care facility (RHCF) located at 195-44 Woodhull avenue, Hollis, New York, New York (Queens County)  
*Lessor:* Hollis Real Estate Co, LLC  
*Lessee:* Hollis Operating Co., LLC  
*Term:* 30 years commencing on the execution of the lease  
*Rental:* \$2,522,312 per year (\$210,192.67 per month)  
*Provisions:* Triple Net Lease

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the Landlord and operating entity.

#### Operating Budget

Following is a summary of the submitted operating budget, presented in 2012 dollars, for the first year subsequent to change in ownership:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	205.91	19,676,142
Medicare	534.72	4,139,837
Private Pay	384.63	<u>1,641,978</u>
Total		\$25,457,957

Expenses:	
Operating	\$20,077,593
Capital	<u>2,867,829</u>
Total	22,945,422
Net Income	\$2,512,535
Utilization: (patient days)	107,568
Occupancy	<u>93.86%</u>

The following is noted with respect to the submitted operating budget:

- Overall utilization is projected at 93.86%, while utilization by payor source is expected as follows:

Medicaid	88.83%
Medicare	7.20%
Private Pay	3.97%

- Breakeven utilization is projected at 84.63%.

#### Capability and Feasibility

The purchase price and initiation of operations, as a financially viable entity, will be funded through the member's equity. Please see BFA Attachment A for the member's net worth statements, which show that the applicant's have sufficient assets to cover all aspects of the application.

Working capital requirements are estimated at \$3,824,237, based on two months' of first year expenses, which \$1,912,119 will be satisfied from the proposed member's equity the remaining \$1,912,118 will be satisfied through a loan from Greystone at 6.25% over 5 years. Presented as BFA Attachment A, is the net worth of proposed members, which shows adequate resources.

The submitted budget indicates that a net income of \$2,512,535 would be maintained during the first year following the change in ownership. Presented as BFA Attachment B is the pro-forma balance sheet of Hollis Operating Co., LLC d/b/a Holliswood Center for Rehabilitation and Healthcare (the Center), which indicates positive members' equity of \$1,402,612 as of the first day of operations.

As shown on BFA Attachment C, Holliswood Care Center, Inc. experienced average negative working capital position and an average positive net asset position and an average net loss of \$513,020 for the years 2010-2011. The 2011 loss is attributable to non recurring expenses that the facility paid in contemplation of the transfer of ownership. They paid \$1.2 million in prior period workers compensation fees in order to settle a long standing liability for the facility. They also wrote off bad debt from prior periods of \$902,887. Both of these were one time occurrences, and if they were not paid, the facility would have had an operating profit for 2011.

As shown on BFA Attachment D, Dutchess Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$580,523 during the period 2008 through 2011.

As shown on BFA Attachment E, University Nursing Home had an average positive working capital position and average positive net asset position, and generated an average net income of \$454,980 during the period 2008 through 2011.

BFA Attachment F, Wartburg Lutheran Home for the Aging In June 2008 had a receiver appointed and did not file cost reports for 2008-2010; therefore there is no financial summary available for this facility. In May 2010 the facility changed its name to Bushwick Center for Rehabilitation and had the operations of both Wartburg Lutheran Home for the Aging and Wartburg Nursing Home, Inc. merged into one operation.

As shown on BFA Attachment G, Queens Center for Rehabilitation had an average negative working capital position and an average positive net asset position, and generated an average net income of \$543,940 during the period 2008 through 2011.

As shown on BFA Attachment H, Brooklyn Center for Rehabilitation had an average positive working capital position and average positive net asset position, and generated an average net Income of \$1,087,227 during the period 2008 through 2011. The facility incurred a net loss of \$907,483 for 2008. This facility was acquired in March 2007. The applicant indicates that the facility has a rate appeal with the Department for Medicaid rebasing, which would offset the losses. This was not promulgated until 2009 and was subsequently approved, creating positive net income in both 2009 and 2010 and 2011 of \$465,887, \$1,254,006 and \$3,536,499, respectively.

As shown on BFA Attachment I, Suffolk Center for Rehabilitation had an average negative working capital position and average negative net asset position, and generated an average net income of \$122,845 during the period 2008 through 2010. In 2011 Mr. Strauss, the member with ownership interest in the facility sold his interest in the facility, therefore no 2011 financial data is necessary.

BFA Attachment J, Bushwick Center for Rehabilitation In May 2010 the facility changed its name to Bushwick Center for Rehab from Wartburg Lutheran Home for the Aging and had the operations of both Wartburg Lutheran Home for the Aging and Wartburg Nursing Home, Inc merged into one operation. Due to this the facility has not submitted a cost report, and therefore there is no financial summary available for this facility.

As shown on BFA Attachment K, Rome Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$611,315 during the period 2008 through 2011.

As shown on BFA Attachment L, Chittenango Center for Rehabilitation had an average negative working capital position and average positive net asset position, and generated an average net income of \$404,452 during the period 2008 through 2011.

As shown on BFA Attachment M, Williamsbridge Manor had an average negative working capital position and average positive net asset position, and generated an average net income of \$234,436 during the period 2008 through 2011.

As shown on BFA Attachment N, Bronx Center for Rehabilitation and Health had an average negative working capital position and average positive net asset position, and generated an average net income of \$ 1,209,260 during the period 2008 through 2011.

Some of the applicants also have ownership interest in these facilities but the purchase was too recent for them to have a complete year of financial data to present at this time. Therefore no financial summary has been done for these facilities: Boro Park Center for Rehabilitation, Waterfront Health Care Center (the Center), Fulton Center for Rehabilitation and HC and Richmond Center for Rehabilitation and Specialty Healthcare.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

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

## Attachments

BFA-Attachment A	Net Worth of Proposed Members
BFA-Attachment B	Pro- forma Balance Sheet, Hollis Operating Co., LLC d/b/a Holliswood Center for Rehabilitation and Healthcare

BFA-Attachment C	Financial Summary Holliswood Care Center
BFA-Attachment D	Financial Summary, Dutchess Center for Rehabilitation
BFA-Attachment E	Financial Summary University Nursing Home
BFA-Attachment F	Financial Summary Wartburg Lutheran Home for the Aging
BFA Attachment G	Financial Summary, Queens Center for Rehabilitation
BFA Attachment H	Financial Summary, Brooklyn Center for Rehabilitation
BFA Attachment I	Financial Summary Suffolk Center for Rehabilitation
BFA Attachment J	Financial Summary Bushwick Center for Rehabilitation
BFA Attachment K	Financial Summary Rome Center for Rehabilitation
BFA Attachment L	Financial Summary Chittenango Center for Rehabilitation
BFA Attachment M	Financial Summary Williamsbridge Manor Nursing Home
BFA Attachment N	Financial Summary Bronx Center for Rehabilitation and Health

**Financial Summary**  
**Holliswood Care Center, Inc**

	FISCAL PERIOD ENDED	
	<u>12/31/11</u>	<u>12/31/10</u>
ASSETS - CURRENT	\$8,506,295	\$4,826,649
ASSETS - FIXED AND OTHER	1,219,081	2,607,887
LIABILITIES - CURRENT	9,415,864	5,616,473
LIABILITIES - LONG-TERM	190,631	218,471
EQUITY	118,881	1,599,592
<hr/>		
INCOME	\$27,332,503	\$19,097,222
EXPENSE	28,489,428	18,966,336
NET INCOME	(1,156,925)	130,886
<hr/>		
NUMBER OF BEDS	314	314
PERCENT OF OCCUPANCY (DAYS)	93.90%	75.07%
<hr/>		
PERCENT OCCUPANCY (DAYS):		
MEDICAID	88.86%	92.60%
MEDICARE	10.04%	3.21%
PRIVATE/OTHER	1.10%	4.18%
<hr/>		
Average Working capital	(\$849,697)	
Average Net Assets	\$859,237	
Average Net Income/(Loss)	-\$513,020	

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 6th day of December, 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 Hollis Operating Company, LLC as the new operator of Holliswood Center for Rehabilitation and Healthcare, 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:

121347 E

FACILITY/APPLICANT:

Hollis Operating Company, Inc., d/b/a  
Holliswood Center for Rehabilitation and  
Healthcare

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 Department reserves the right to require continued reporting beyond the two year period. [RNR]

3. Submission of a Loan commitment for working capital that is acceptable to the Department. [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







# Public Health and Health Planning Council

Project # 122145-E

**Gamzel NY, Inc.**  
**d/b/a Revival Home Health Care**

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

**Program: Certified Home Health Agency**  
**Submitted: September 21, 2012**

## Executive Summary

### Description

Gamzel NY, Inc. d/b/a as Revival Home Health Care (Revival), an existing proprietary business corporation certified as a special needs certified home health agency (CHHA), requests approval to transfer 100% of the stock and operating interests in Gamzel NY, Inc. from the current owner, Suzanne Faye Zakheim, to proposed member Isaac Soskin. Revival will continue to provide nursing, physical therapy, occupational therapy, speech language pathology services, medical social services, nutritional services, home health aide services and medical supplies, equipment and appliances as a special needs CHHA serving the Hasidic and Orthodox Jewish population, Russian immigrants and Holocaust survivors throughout Bronx, Kings, Nassau, New York, Orange, Queens, Rockland, Sullivan and Westchester counties.

There will be no change in the corporation, and the proposed shareholder will assume ownership of the corporation, which will be a total asset and liability transfer.

The existing lease agreement between Revival and 5350 Kings Highway, LLC, which was approved under CON #051048-E in November 2005, will continue to be in effect for the remaining term of the lease (2015) with a five-year renewal option.

DOH Recommendation  
Contingent approval.

### Need Summary

As this project involves only a change in ownership of a CHHA, no Need recommendation is required.

### Program Summary

The personal disclosure information indicates there is nothing in Isaac Soskin's background to negatively impact his position as sole stockholder, director, and officer of Gamzel NY, Inc., d/b/a Revival Home Health Care. The applicant has the required character and competence to operate a certified home health agency under Article 36 of the Public Health Law.

### Financial Summary

There are no project costs associated with this application. The \$12,000,000 purchase price will be met with an \$11,000,000 promissory note (13 yrs. @ 6.0%) and \$1,000,000 from the proposed member's equity.

Budget:	<i>Revenues:</i>	\$ 176,365,322
	<i>Budget:</i>	<u>173,699,710</u>
	<i>Gain/(Loss):</i>	\$ 2,665,612

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 an executed promissory note acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the Bylaws of Gamzel NY, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the Commissioner's approval of the transfer of a controlling interest in Gamzel NY, Inc., pursuant to 10 NYCRR § 98-1.9(a), acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The provision of services is limited to the Hasidic and Orthodox Jewish population, Holocaust survivors, and Russian immigrants, with the understanding that the Office of Health Systems Management will monitor the utilization statistics of the agency for ongoing compliance with the condition. [CHA]

Council Action Date

**December 6, 2012.**

## Programmatic Analysis

### Background

Gamzel NY, Inc., d/b/a Revival Home Health Care, is a proprietary Article 36 Certified Home Health Agency approved to serve the special needs population of the Hasidic and Orthodox Jewish population, Holocaust survivors, and Russian immigrants in Bronx, New York, Queens, Kings, Westchester, Rockland, Orange, Sullivan, and Nassau Counties. Suzanne Faye Zakheim is currently the sole 100% stockholder in the corporation, and is also its sole director and officer. The current proposal seeks approval for a change in stockholder of the corporation from Suzanne Faye Zakheim, who owns all 200 shares of the corporation's issued stock, to Isaac Soskin, who will purchase all 200 shares of the corporation's issued stock. Mr. Soskin will also become the sole director and officer of Gamzel NY, Inc., d/b/a Revival Home Health Care.

Gamzel NY, Inc. will continue to operate the certified home health agency under the name of Revival Home Health Care and the applicant has submitted a copy of the Certificate of Assumed Name on file with the New York State Department of State. As a result of this transaction, there will be no changes in the current scope of services provided, which includes Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional Services, Occupational Therapy, Physical Therapy, and Speech-Language Pathology, or in the geographic area served, which includes Bronx, New York, Queens, Kings, Westchester, Rockland, Orange, Sullivan, and Nassau Counties. The applicant notes that Gamzel NY, Inc., d/b/a Revival Home Health Care, is a proposed LLC member of Ahava Group III, LLC, d/b/a Revival Choice, a proposed Managed Long Term Care Plan (MLTCP) that currently has an application for establishment pending before the New York State Department of Health. Accordingly, as sole stockholder of proposed LLC member Gamzel NY, Inc., d/b/a Revival Home Health Care, Mr. Soskin would have control over Ahava Group III, LLC, d/b/a Revival Choice, upon approval and establishment of its proposed Managed Long Term Care Plan (MLTCP).

Isaac Soskin is currently employed as Chief Executive Officer and Administrator of Gamzel NY, Inc., d/b/a Revival Home Health Care. Mr. Soskin has no control affiliations with, nor any ownership interests in, any other health care facilities or agencies. A search of Mr. Soskin and his employer revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The personal disclosure information indicates there is nothing in Isaac Soskin's background to negatively impact his position as sole stockholder, director, and officer of Gamzel NY, Inc., d/b/a Revival Home Health Care. The applicant has the required character and competence to operate a certified home health agency under Article 36 of the Public Health Law.

### Recommendation

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

## Financial Analysis

### Stock Purchase Agreement

The applicant has submitted an executed stock purchase agreement, the terms of which are summarized below:

<i>Date:</i>	September 5, 2012
<i>Seller:</i>	Suzanne Faye Zakheim
<i>Purchaser:</i>	Isaac Soskin
<i>Purpose:</i>	The sale of 100% stock and operating interest of Gazmel NY, Inc.
<i>Purchase Price:</i>	\$12,000,000
<i>Payment Terms:</i>	\$1,000,000 due at closing and an \$11,000,000 promissory note held by the seller with a 6% interest rate for 13 years, payable monthly.

Operating Budgets

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

	<u>Years One and Three</u>
Revenues:	
Commercial	\$4,105,142
Medicare	28,527,383
Medicaid	<u>143,732,796</u>
Total Revenue:	\$176,365,322
Expenses	
Operating:	\$172,767,855
Capital:	<u>931,855</u>
Total Expenses:	\$173,699,710
Net Income:	\$2,665,612

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

	<u>Years One and Three</u>
Commercial Managed Care	2%
Medicare Fee for Service	23%
Medicaid managed Care	73%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of Revival Home Health Care. Revenues are reflective of current payment rates.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price of \$12,000,000 will be met with an \$11,000,000 promissory note held by the seller at an interest rate of 6% over thirteen years and \$1,000,000 from the proposed member's equity. Presented as BFA Attachment A is the net worth statement of the proposed member showing sufficient funds available.

Working capital requirements are estimated at \$28,949,952 based on two months of the first year expenses and will be maintained from current operations. Presented as BFA Attachment D is the pro-forma balance sheet of Revival Home Care, which indicates positive shareholder equity of \$3,478,070.

As shown on BFA Attachment B, financial summary of Gamzel NY, Inc., the facility has experienced negative working capital and negative stockholders' equity positions for 2010 and 2011, with an average net income of \$6,531,787 for the period shown. The applicant has stated the reason for the negative working capital and stockholder's equity was due to GAAP accounting principles and is not related to actual current liabilities that are due from operations. It is a result of employee accrued compensation and due to third party payors. Accrued compensation is related to sick and vacation time accrued by staff and is only payable upon use of those accrued benefits.

As shown on BFA Attachment C, internal financial summary for Gazmel NY, Inc. as of September 30, 2012, the facility has experienced negative working capital, maintained positive stockholder's equity and generated a net income of \$8,068,843.

Based on the preceding, and subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

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

## Attachments

BFA Attachment A	Net Worth Statement
BFA Attachment B	Financial Summary 2010-2011, Gazmel NY, Inc.
BFA Attachment C	Internal Financial Summary as of September 30, 2012, Gazmel NY, Inc.
BFA Attachment D	Pro forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of December, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to transfer 100 percent of the operating interest from the current sole shareholder to Isaac Soskin, 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

122145 E

Ganzel NY, Inc. d/b/a Revival Home Health  
Care

APPROVAL CONTINGENT UPON:

1. Submission of an executed promissory note acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of the Bylaws of Gamzel NY, Inc., acceptable to the Department. [CSL]
3. Submission of a photocopy of the Commissioner's approval of the transfer of a controlling interest in Gamzel NY, Inc., pursuant to 10 NYCRR § 98-1.9(a), acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

1. The provision of services is limited to the Hasidic and Orthodox Jewish population, Holocaust survivors, and Russian immigrants, with the understanding that the Office of Health Systems Management will monitor the utilization statistics of the agency for ongoing compliance with the condition. [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 # 121240-E  
**Your Choice at Home, Inc.**

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

**Program: Certified Home Health Agency**  
**Submitted: April 18, 2012**

## Executive Summary

### Description

Your Choice at Home, Inc., a to-be-formed not-for-profit corporation, requests approval to establish an Article 36 Certified Home Health Agency (CHHA) to serve Kings, Queens and New York counties. The applicant is closely affiliated with Cobble Hill Health Center, Inc. a 364-bed, not-for-profit residential health care facility (RHCF) located in Kings County, and also operates a Long Term Home Health Care Program (LTHHCP) and Adult Day Health Care Program (ADHCP) in the county of Kings.

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. Cobble Hill Health Center, 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 to a broad effort to promote the development of care management arrangements for Medicaid recipients.

DOH Recommendation  
Contingent approval.

### Need Summary

The applicant provided evidence of a population in need of the services of a CHHA and presented the projected need for additional CHHA capacity based on projected CHHA utilization for each county and projected the growth rate of the population and how that would impact the need for CHHA services based on the current visit rate. In addition, the applicant provided statistical information on dual-eligible individuals and identified medically-underserved areas within each county.

### Program Summary

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

### Financial Summary

There are no project costs associated with this proposal.

Budget:	<i>Revenues:</i>	\$ 9,980,310
	<i>Expenses:</i>	<u>9,701,677</u>
	<i>Gain/(Loss):</i>	\$ 278,633

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 current Certificate of Good Standing for attorney Thomas Edward Spath. [LTC]
2. Submission of an executed building lease acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the applicant's finalized and executed Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's finalized bylaws, with evidence of adoption, 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

**December 6, 2012.**

## Need Analysis

### Background

Your Choice at Home, Inc., is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve Kings, Queens and New York counties.

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 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.

Applicants that were not presented to the Public Health and Health Planning Council with a recommendation for approval at either the August 2012 or October 2012 meetings were considered deferred. The department notified RFA applicants that we are exercising our authority under the RFA Section VII.D.5 to seek clarifications and revisions of applications from those applicants whose applications have been deferred. Letters dated September 17<sup>th</sup> and 27<sup>th</sup> were sent to these applicants through NYSECON and included information related to the review and evaluation criteria and characteristics of approved applicants.

Additionally, the opportunity to arrange a meeting or phone conference with the Division of Home and Community Based Services to discuss the RFA criteria that was used to evaluate each application was made available to each applicant

### Competitive Review

The CON determination of need was based on the applicant's response to the RFA which includes any additional information submitted by the applicant in response to the aforementioned September 17<sup>th</sup> and 27<sup>th</sup> letters. The applications were reviewed 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;
- Description of a 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.

Your Choice at Home, Inc is affiliated with Cobble Hill Health Center, Inc. which is an existing nursing home that operates a long term home health care program. They have existing relationships with Guildnet, VNSChoice and Wellcare. In addition, Cobble Hills Health Center, Inc. is the LLC member of Cobble Hill Lifecare Plus, LLC, which has contracted with Aetna, Inc. and together with Aetna have applied for approval of the proposed Better Health Managed Long Term Care Plan (MLTCP) to provide managed care services. The relationship with Aetna's new MLTCP, Better Health will help facilitate the transition of long term home health care patients into Managed Long Term Care. They will also provide a continuum of care through this transition as a care management provider for the MLTCP.

The applicant has partnered with hospitals through participation in CMS' Continuing Care Transition Program and discussed implementation of care management teams, care coordination, and transition of fee for service to managed care. The applicant makes a strong case for advancing the initiatives for the MRT with its care continuum and linkages to MLTCP's.

The applicant has a strong commitment to the principles of quality improvement and has demonstrated dynamic innovation in this arena that has resulted in improved health outcomes.

Their innovative approach to disease management enhances their capacity to support Medicaid Redesign initiatives. These strong and innovative QA programs will help control CHHA utilization.

The applicant demonstrated that they will have extensive partnering, and care coordination, and will establish a continuum of care that will serve to reduce operating costs, reduce inappropriate utilization, and improve outcomes. They describe techniques that they will employ such as medication management, disease management tools and protocols, training of aides to alert nurses and doctors in order to avoid hospital admissions. They described in detail community collaborations that the organization has that will help reduce inappropriate utilization while improving outcomes. An example is their involvement with the Brooklyn Care Transition Coalition to reduce high rates of readmissions.

The applicant provided demographic data for each county requested, including extensive discharge statistical data for each county, correlating hospital and NH discharges to projected post hospital and NH home care needs. The applicant provided evidence of a population in need of the services of a CHHA and presented the projected need for additional CHHA capacity based on projected CHHA utilization for each county and projected the growth rate of the population and how that would impact the need for CHHA services based on the current visit rate. In addition, the applicant provided statistical information on dual-eligible individuals and identified medically-underserved areas within each county.

Recommendation

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

## Programmatic Analysis

### Background

Your Choice at Home, Inc., is a proposed not-for-profit corporation requesting approval to become established as a CHHA under Article 36 of the Public Health Law, with approval to serve the three downstate counties of Kings, Queens, and New York. Although the corporation will have a working affiliation, and share common board members, with Cobble Hill Health Center, Inc., and its affiliates, the corporation Your Choice at Home, Inc., will have no member, parent, or subsidiary corporations within its own corporate organizational structure.

All board members of the proposed Your Choice at Home, Inc., are also either board members of, or employed by, Cobble Hill Health Center, Inc. an existing not-for-profit corporation that operates Cobble Hill Health Center, Inc. a not-for-profit Article 28 nursing home, and Cobble Hill Health Center, Inc., LTHHCP, a not-for profit Article 36 long term home health care program (LTHHCP). In addition, the Cobble Hill organizational chart provided by the applicant indicates that Cobble Hill Health Center, Inc., is the LLC member of Cobble Hill Lifecare Plus, LLC, which has contracted with Aetna, Inc., and together with Aetna, has applied with the New York State Department of Health for approval of the proposed Better Health Managed Long Term Care Plan (MLTCP) to provide managed care services.

The applicant proposes to operate the CHHA from an office located at 822 Lexington Avenue, Brooklyn, New York 11221 (Kings County), which is also the practice location of the existing Cobble Hill Health Center, Inc., LTHHCP. 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
Homemaker	Housekeeper	
Medical Supplies, Equipment, and Appliances		

The members of the Board of Directors of Your Choice at Home, Inc. will be as follows:

**Frances M. McPartland**

Retired Senior Vice President & Portfolio Manager,  
Bank of America (formerly Fleet Bank)

**Thomas Edward Spath, Esq.**

Of Counsel, Abelman, Frayne, and Schwab  
Law Firm

**Judith A. Francis**

Marketing Director / Copywriter, Advertising  
Management (Advertising Agency)

**Anthony S. Yang-Lewis, LNHA**

Administrator, Cobble Hill Health Center, Inc.

Ms. McPartland, Mr. Spath, and Ms. Francis are all currently board members of Cobble Hill Health Center, Inc., and Mr. Yang-Lewis is currently employed by Cobble Hill Health Center, Inc. as RHCF/LTHHCP Administrator. The board members list no other health care affiliations.

A search of the individuals and their affiliations 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 Division of Residential Services indicates no issues with the licensure of the Nursing Home Administrator associated with this application. The New York State Unified Court System indicates no issues with the licensure of the attorney associated with this application. Submission of a Certificate of Good Standing for the attorney listed above is still pending (see contingency).

A ten year review of the following facilities was performed as part of this review:

Cobble Hill Health Center, Inc. (RHCF),  
Cobble Hill Health Center, Inc., LTHHCP (LTHHCP)

The Division of Residential Services has indicated that the nursing home has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations. There were no enforcement actions within the previous ten years.

The Division of Home and Community Based Services has indicated that the long term home health care program has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations. There were no enforcement actions within the previous ten years.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site, the terms are summarized below:

<i>Premises:</i>	3,000 gross square feet located at 822 Lexington Avenue, Brooklyn
<i>Landlord:</i>	Cobble Hill Health Center, Inc.
<i>Lessee:</i>	Your Choice At Home, Inc.
<i>Term:</i>	10 years
<i>Rent</i>	\$60,000 per year for the first two years (\$20 per sq. ft.) After the initial two years- rent will be based on the greater of the existing rate or the fair market rental value (FMRV)
<i>Provisions:</i>	Utilities and basic maintenance are included in the rent

The applicant states the lease is a non-arm's length arrangement.

### Operating Budget

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

Description	<u>First Year</u>	<u>Third Year</u>
Medicaid	\$2,620,309	\$7,236,852
Medicare	931,400	2,686,380
Private Pay	<u>20,480</u>	<u>57,078</u>
Total Revenues	\$3,572,189	\$9,980,310
Total Expenses	<u>\$3,680,638</u>	<u>\$9,701,677</u>
Net Income or (Loss)	\$(108,449)	\$278,633

Utilization by payor source for the first & third year is as follows:

	<u>First Year</u>	<u>Third Year</u>
Medicaid – Fee for Service	36.17%	14.47%
Medicaid – Manage Care	36.15%	57.89%
Medicare – Fee for Service	20.65%	20.60%
Medicare – Manage Care	3.38%	3.39%
Private Pay	0.35%	0.35%
Charity Care	3.30%	3.30%

Utilization and expense assumptions are based on evaluations by the applicant. They expect the patients will need approximately: 3 visits per month for Nursing; 2 visits per month for rehabilitation therapy (physical therapy, occupational therapy or speech pathology); 1 visit per month for social services; and 20 visits per month for home health aids.

The Medicare average episodic payment of \$3,337 is predicated on the calendar year 2012 national standardized 60-day episode payment rate of \$2,138.52, adjusted for the average case mix of 1.2632 and a wage index of 1.3052 for the New York City service area. Medicaid average episode payment is expected to be \$5,618 after adjusting for the local wage index factor of .996524 and using a case mix factor of 1.

### Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$1,616,946, which appears reasonable based upon two months of third year expenses, which will be provided from Cobble Hill Health Center, Inc. accumulated funds. Presented as BFA Attachment A is Cobble Hill Health Center, Inc 2010 and 2011 certified financial summary which shows sufficient resources for this purpose. Presented as BFA Attachment B is Pro Forma Balance Sheet showing Cobble Hill Health Center, Inc., will provide \$1,667,000 in financial support.

The budget projects a first year operating loss of \$108,449 and a third year operating surplus of \$278,633. Revenues are based current payment methodologies. The submitted budget appears reasonable

A review of Attachment A shows Cobble Hill Health Center, Inc (Center) had an average operating surplus for the years 2010 -2011 of \$1,035,863. When you add in non-operating income the net assets decreased in 2011 by \$149,669 and increased by \$10,035,629 in 2010. The loss reflected in 2011 is due to a unrealized negative change of \$6,832,577 in the interest rate swap agreement. Also as part of non-operating revenues, the Center recognized HEAL NY Phase 2 grant payments of \$5,061,336 in 2011 and \$8,952,699 in 2010. The Center had a positive average working capital position of \$17,089,746 and ended 2011 with \$39,180,587 in total net assets.

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

Recommendation

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

## Attachments

BFA Attachment A	Financial Summary for 2010 and 2011, Cobble Hill Health Center, Inc.
BFA Attachment B	Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 6th day of December, 2012, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish a certified home health agency (CHHA) to serve Kings, Queens and New York Counties, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

121240 E

Your Choice At Home, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a current Certificate of Good Standing for attorney Thomas Edward Spath. [LTC]
2. Submission of an executed building lease acceptable to the Department of Health. [BFA]
3. Submission of a photocopy of the applicant's finalized and executed Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's finalized bylaws, with evidence of adoption, 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





**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel *JED*

**DATE:** November 8, 2012

**SUBJECT:** Proposed Amended and Restated Certificates of Incorporation of Health Alliance, Inc., Benedictine Hospital, and The Kingston Hospital

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Attached are the proposed Amended and Restated Certificates of Incorporation of Health Alliance, Inc., Benedictine Hospital, and The Kingston Hospital. Health Alliance, Inc. is a not-for-profit corporation and was established by the Public Health Council in 2009 as the co-operator of Benedictine Hospital and The Kingston Hospital, as well as Margaret Memorial Hospital. Benedictine Hospital and The Kingston Hospital, both not-for-profit corporation operators of hospitals licensed under Article 28 of the Public Health Law, seek approval to change their names to "HealthAlliance Hospital Mary's Avenue Campus" and "HealthAlliance Hospital Broadway Campus", respectively. The corporations' purposes will be amended as well to reflect the new names and to remove from the purposes of Benedictine Hospital its obligations as a Catholic hospital. Public Health and Health Planning Council approval for these changes of corporate names and purposes is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated November 2, 2012 from Peter J. Millock, attorney for the corporations. As explained in that letter, Benedictine Hospital and The Kingston Hospital intend to consolidate at a future date, subject to the Department's approval, and the changes in the corporations' name would reflect that consolidation. The letter also states that Benedictine Hospital will cease to be a Catholic hospital, as the Benedictine Sisters are withdrawing as sponsors. Further amendments to the provisions in each Certificate regarding corporate membership reflect this withdrawal.

Please note that the Amended and Restated Certificate of Incorporation of Health Alliance, Inc. also describes its membership of Health Alliance Senior Living Corp., the operator of Woodland Pond at New Paltz, a continuing care retirement community licensed under Article 46 of the Public Health Law ("CCRC"). The Public Health and Health Planning Council approved the establishment of Health Alliance, Inc. as the co-operator of the CCRC in July 2012.

The Department has no objection to the proposed name changes, and the proposed Amended and Restated Certificates of Incorporation are in legally acceptable form.

Attachments

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
HEALTH ALLIANCE, INC.**

Under Section 805 of the Not-for-Profit Corporation Law

Cynthia A. Lowe, being the Chair of the Board of Directors of Health Alliance, Inc., hereby certifies:

**FIRST:** The name of the corporation is Health Alliance, Inc. (the "Corporation"). The name under which the Corporation was formed is Health Alliance Planning, Inc.

**SECOND:** The Certificate of Incorporation of Health Alliance Planning, Inc. was filed by the Department of State on August 23, 2007.

**THIRD:** The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the Not-for-Profit Corporation Law:

1. Paragraph "FIRST," stating the name of the Corporation, is hereby amended to change the name and to read in full as follows:

"FIRST: The name of the corporation is HealthAlliance, Inc. (the "Corporation"). The name under which the Corporation was formed is Health Alliance Planning, Inc."

2. Subparagraph (b) of Paragraph "THIRD" stating the purposes of the Corporation is hereby amended to read in full as follows:

"(b) To be and to exercise the following powers as a member of HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals" and, individually, a "Hospital") and HealthAlliance Senior Living Corp. ("HASLC"):

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;
- Credential all licensed health care professionals to be providing services at the Hospitals and/or HASLC or any entity controlled by the Hospitals and/or HASLC (subject to the adoption by the Hospital

and/or HASLC of amendments to the medical staff bylaws to the extent required to authorize such action);

- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and/or HASLC and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals and/or HASLC;
- Elect and remove the members of the boards of directors and board officers of the Hospitals and the members of the board of directors of HASLC;
- Appoint and remove the corporate officers of the Hospitals and/or HASLC (which power may be delegated to the Corporation's chief executive officer);
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Hospitals and/or HASLC;
- Approve and may adopt the annual capital and operating budgets of the Hospitals and/or HASLC;
- Approve and may initiate the addition or deletion of services at the Hospitals and/or HASLC;
- Approve and may initiate the filing of certificate of need applications by the Hospitals and/or HASLC;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Hospitals and/or HASLC;
- Approve the incurrence of any debt by the Hospitals and/or HASLC;
- Approve any expenditure by the Hospitals and/or HASLC in aggregate per year above a threshold amount set by the Corporation which is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Hospitals and/or HASLC;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Hospitals and/or HASLC;

- Approve the sale by the Hospitals and/or HASLC of any assets outside the ordinary course of business or approved within the Hospital's and/or HASLC's budget;
- Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, Margaretville Memorial Hospital and HASLC remain secular institutions; and
- Exercise any power that is not specifically and explicitly reserved to the Hospitals and/or HASLC in the Certificate of Incorporation or Bylaws of the Hospitals and/or HASLC or reserved to the Hospitals and/or HASLC by law or regulation.

3. Paragraph "FOURTH," stating the county within the state in which the office of the Corporation is located, is hereby amended to read in full as follows:

"FOURTH: The office of the Corporation within the State of New York is to be located in the County of Ulster."

**FOURTH:** The text of the Certificate of Incorporation is hereby restated as amended to read in full as follows:

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
HEALTHALLIANCE, INC.**

**FIRST:** The name of the corporation is HealthAlliance, Inc. (the "Corporation"). The name under which the Corporation was formed is Health Alliance Planning, Inc.

**SECOND:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York ("NPCL") and is a type B corporation as defined in Section 201 of the NPCL.

**THIRD:** The Corporation is organized for the following purposes:

- (a) To study, plan and implement the allocation of clinical health services in Ulster and Delaware Counties, New York; to educate the residents of Ulster and Delaware Counties about options for the

provision of such services; and to operate a health care system for the provision of such services;

- (b) To be and to exercise the following powers as a member of HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus and Margaretville Memorial Hospital (collectively, the "Hospitals" and, individually, a "Hospital") and HealthAlliance Senior Living Corp. ("HASLC"):
- Adopt strategic plans, including, without limitation, plans for the reallocation of services between HealthAlliance Hospital Mary's Avenue Campus and HealthAlliance Hospital Broadway Campus;
  - Credential all licensed health care professionals to be providing services at the Hospitals and/or HASLC or any entity controlled by the Hospitals and/or HASLC (subject to the adoption by the Hospital and/or HASLC of amendments to the medical staff bylaws to the extent required to authorize such action);
  - Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Hospitals and/or HASLC and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Hospitals and/or HASLC;
  - Elect and remove the members of the boards of directors and board officers of the Hospitals and the members of the board of directors of HASLC;
  - Appoint and remove the corporate officers of the Hospitals and/or HASLC (which power may be delegated to the Corporation's chief executive officer);
  - Approve and may initiate the adoption, deletion and amendment of the bylaws of the Hospitals and/or HASLC;
  - Approve and may adopt the annual capital and operating budgets of the Hospitals and/or HASLC;
  - Approve and may initiate the addition or deletion of services at the Hospitals and/or HASLC;
  - Approve and may initiate the filing of certificate of need applications by the Hospitals and/or HASLC;

- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Hospitals and/or HASLC;
  - Approve the incurrence of any debt by the Hospitals and/or HASLC;
  - Approve any expenditure by the Hospitals and/or HASLC in aggregate per year above a threshold amount set by the Corporation which is not included in an approved capital or operating budget;
  - Approve and may initiate the commencement and settlement of any litigation by the Hospitals and/or HASLC;
  - Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
  - Approve the dissolution of the Hospitals and/or HASLC;
  - Approve the sale by the Hospitals and/or HASLC of any assets outside the ordinary course of business or approved within the Hospital's and/or HASLC's budget;
  - Assure that HealthAlliance Hospital Mary's Avenue Campus, HealthAlliance Hospital Broadway Campus, Margaretville Memorial Hospital and HASLC remain secular institutions; and
  - Exercise any power that is not specifically and explicitly reserved to the Hospitals and/or HASLC in the Certificate of Incorporation or Bylaws of the Hospitals and/or HASLC or reserved to the Hospitals and/or HASLC by law or regulation.
- (c) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations;
- (d) To solicit charitable contributions to advance the purposes of the Corporation, and to support the activities of its affiliates, the Hospitals and their affiliates; and
- (e) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, to the extent such purposes are purposes described in Section 509(a)(1)(2) or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the Corporation, directly or

indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law Section 404(a) through (n),(p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, a health maintenance organization, or a comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Certificate, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;
2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;
3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or
4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

**FOURTH:** The office of the Corporation within the State of New York is to be located in the County of Ulster.

**FIFTH:** No part of the assets, income or net earnings of the Corporation shall inure to the benefit of any member, director, trustee, officer or employee of the



Corporation, or to any private individual, except as reasonable compensation for services rendered in effecting the purposes of the Corporation.

**SIXTH:** In the event of dissolution of the Corporation, no distribution of any of the property or assets of the Corporation shall be made to any member, director, trustee, officer or employee of the Corporation, or to any private individual, but all of such property and assets shall be distributed to accomplish the charitable, educational and scientific purposes for which the Corporation is organized or distributed to such organizations as the board of directors of the Corporation shall direct and which qualify under Section 501(c)(3) of the Code, or the corresponding provision of any successor statute, subject to approval by a justice of the Supreme Court of the State of New York or any other court or judge having jurisdiction.

**SEVENTH:** The Secretary 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 shall mail a copy of any process against the Corporation served upon her/him is: Nixon Peabody LLP, 677 Broadway, Albany, New York 12207.

**FIFTH:** This Amended and Restated Certificate of Incorporation was authorized by vote of its board of directors.

**IN WITNESS WHEREOF**, the undersigned, being at least eighteen (18) years of age, has subscribed and affirmed this Amended and Restated Certificate of Incorporation as true under the penalties of perjury on the date indicated next to her name:



Cynthia A. Lowe

Chair of the Board of Directors

Dated: 11/1, 2012

**NIXON PEABODY**LLP  
ATTORNEYS AT LAW

677 Broadway – 10<sup>th</sup> Floor  
Albany, New York 12207  
(518) 427-2650

PETER J. MILLOCK  
Direct Dial: (518) 427-2651  
Direct Fax: (866) 947-1239  
E-Mail: pmillock@nixonpeabody.com

November 2, 2012

James Dering, Esq.  
General Counsel  
New York State Department of Health  
Corning Tower, Room 2438  
Empire State Plaza  
Albany, NY 12237

**HAND DELIVERED**

**RECEIVED**

NOV 5 2012

**RE:** Health Alliance, Inc.

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

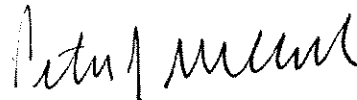
Dear Mr. Dering:

I have enclosed for your review and for approval of the PHHPC the Amended and Restated Certificates of Incorporation of Health Alliance, Inc. ("HA"), Benedictine Hospital ("BH") and The Kingston Hospital ("TKH"). HA is the co-established operator of BH and TKH. In 2007, when BH and TKH aligned under HA, they agreed to maintain both hospitals in Kingston and to keep BH as a Catholic hospital and TKH as a secular hospital. General economic conditions and some economic factors specific to Kingston have now made it fiscally infeasible to sustain two hospitals in the community.

The documents submitted for your review provide that BH will no longer be a Catholic hospital and that the Benedictine Sisters will no longer be the sponsors of BH. This will facilitate the consolidation of clinical and administrative services at the BH campus. The clinical consolidation will be the subject of a future CON application.

Thank you for your consideration.

Sincerely,



Peter J. Millock

**RECEIVED**

NOV 02 2012

PJM/kjd  
Enclosures

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS

## RESOLUTION


RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Amended and Restated Certificate of Incorporation of Alliance, Inc., dated November 1, 2012.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel 

**DATE:** November 8, 2012

**SUBJECT:** Proposed Amended and Restated Certificates of Incorporation of Health Alliance, Inc., Benedictine Hospital, and The Kingston Hospital

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Attached are the proposed Amended and Restated Certificates of Incorporation of Health Alliance, Inc., Benedictine Hospital, and The Kingston Hospital. Health Alliance, Inc. is a not-for-profit corporation and was established by the Public Health Council in 2009 as the co-operator of Benedictine Hospital and The Kingston Hospital, as well as Margaret Memorial Hospital. Benedictine Hospital and The Kingston Hospital, both not-for-profit corporation operators of hospitals licensed under Article 28 of the Public Health Law, seek approval to change their names to "HealthAlliance Hospital Mary's Avenue Campus" and "HealthAlliance Hospital Broadway Campus", respectively. The corporations' purposes will be amended as well to reflect the new names and to remove from the purposes of Benedictine Hospital its obligations as a Catholic hospital. Public Health and Health Planning Council approval for these changes of corporate names and purposes is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated November 2, 2012 from Peter J. Millock, attorney for the corporations. As explained in that letter, Benedictine Hospital and The Kingston Hospital intend to consolidate at a future date, subject to the Department's approval, and the changes in the corporations' name would reflect that consolidation. The letter also states that Benedictine Hospital will cease to be a Catholic hospital, as the Benedictine Sisters are withdrawing as sponsors. Further amendments to the provisions in each Certificate regarding corporate membership reflect this withdrawal.

Please note that the Amended and Restated Certificate of Incorporation of Health Alliance, Inc. also describes its membership of Health Alliance Senior Living Corp., the operator of Woodland Pond at New Paltz, a continuing care retirement community licensed under Article 46 of the Public Health Law ("CCRC"). The Public Health and Health Planning Council approved the establishment of Health Alliance, Inc. as the co-operator of the CCRC in July 2012.

The Department has no objection to the proposed name changes, and the proposed Amended and Restated Certificates of Incorporation are in legally acceptable form.

Attachments

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**BENEDICTINE HOSPITAL**

Under Section 805 of the Not-for-Profit Corporation Law

Michael Ryan and Ward Todd, being, respectively, the Chair and Vice-Chair of the Board of Directors of Benedictine Hospital, hereby certify:

**FIRST:** The name of the corporation is Benedictine Hospital (the "Corporation"). The name under which the Corporation was formed is Our Lady of Victory Sanitarium.

**SECOND:** The Certificate of Incorporation of the Corporation was filed by the Department of State on November 7, 1902 pursuant to Chapter 559 of the Laws of 1895 of the State of New York.

**THIRD:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPCL"). The Corporation is a type B corporation as defined in Section 201 of the NPCL and shall remain a type B corporation after this Restated Certificate of Incorporation is effectuated.

**FOURTH:** The Certificate of Incorporation of the Corporation is amended to effect the following amendments pursuant to the NPCL:

1. Paragraph "FIRST," stating the name of the corporation is hereby amended to change the name and to read in full as follows:

"FIRST: The name of the Corporation is HealthAlliance Hospital Mary's Avenue Campus (the "Corporation"). The name under which the Corporation was formed is Our Lady of Victory Sanitarium."

2. Paragraph "THIRD," stating the objects or purposes of the Corporation is hereby amended to change the purposes of the Corporation. Paragraph THIRD, as amended and restated, shall read in full as follows:

"THIRD: The Corporation shall have the following purposes:

- (a) To establish, operate and maintain a general hospital in Ulster County, New York pursuant to Article 28 of the Public Health Law;
- (b) To participate, insofar as circumstances may warrant, in any activity permitted by present law or future law designed to promote the general health of the community;
- (c) To carry on educational activities related to the delivery of health care services or the promotion of health which, in the opinion of the members of the Corporation's Board may be justified by the facilities, personnel, funds or other requirements that are or can be made available;
- (d) To solicit, receive and administer funds, contributions or grants from any source to be applied to charitable, educational and scientific purposes of the Corporation;
- (e) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations; and
- (f) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, including, but not limited to, those powers set forth in Section 202 of the NPCL, to the extent such purposes are purposes described in Section 509(a)(1), (2), or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404(a) through (n), (p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Restated Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, or a health maintenance organization or comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Restated Certificate of Incorporation, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;
2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;
3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or
4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

3. A new Paragraph "FOURTH," naming the sole member of the Corporation and reserving certain powers to such member, is hereby amended to read in full as follows:

"FOURTH: The Corporation shall have one member: HealthAlliance, Inc. (the "Member"). The Corporation shall have the primary responsibility for assuring its commitment to its charitable mission, the quality of care provided at its facilities and oversight of plant facilities, which may include the employment of operations staff, billing for Corporation services under the Corporation's provider numbers, and the initiation of proposed amendments to the Corporation's policies, procedures and bylaws, the addition and deletion of services and related matters. Subject to the foregoing responsibilities, with respect to the Corporation, the Member shall have the following powers with respect to the Corporation:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between the Corporation and HealthAlliance Hospital Broadway Campus;
- Credential all licensed health care professionals to be providing services at the Corporation or its affiliates (subject to the adoption by the Corporation of amendments to its medical staff bylaws to the extent required to authorize such action);
- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer



review activities of the Corporation and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Corporation;

- Elect and remove the members of the Board of Directors and board officers of the Corporation;
- Appoint and remove the corporate officers of the Corporation (which power may be delegated to the Member's chief executive officer) and approve the appointment of the chief executive officer of the Corporation;
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Corporation;
- Approve and may adopt the annual capital and operating budgets of the Corporation;
- Approve and may initiate the addition or deletion of services at the Corporation;
- Approve and may initiate the filing of certificate of need applications by the Corporation;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Corporation;
- Approve the incurrence of any debt by the Corporation;
- Approve any expenditure by the Corporation in aggregate per year above a threshold amount set by the Member that is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Corporation;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Corporation;
- Approve the sale by the Corporation of any assets outside the ordinary course of business or approved within the Corporation's budget;

- Assure that the Corporation remains a secular institution; and
- Exercise any power that is not specifically and explicitly reserved to the Corporation in this Restated Certificate of Incorporation or the bylaws of the Corporation or reserved to the Corporation by law or regulation.”

4. Paragraph “FIFTH,” relating to the role of the Benedictine Sisters and reserved powers vested in the Benedictine Sisters, is hereby deleted.

5. Paragraph “SIXTH,” is hereby renumbered as Paragraph “FIFTH”; Paragraph “SEVENTH” is hereby renumbered as Paragraph “SIXTH”; Paragraph “EIGHTH” is hereby renumbered as Paragraph “SEVENTH”; Paragraph “NINTH” is hereby renumbered as Paragraph “EIGHTH”; Paragraph “TENTH” is hereby renumbered as Paragraph “NINTH”; Paragraph “ELEVENTH” is hereby renumbered as Paragraph “TENTH”.

**FIFTH:** The text of the Certificate of Incorporation is hereby restated, as amended, to read in full as follows:

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF**

**HEALTHALLIANCE HOSPITAL MARY’S AVENUE CAMPUS**

**FIRST:** The name of the corporation is HealthAlliance Hospital Mary’s Avenue Campus (the “Corporation”). The name under which the Corporation was formed is Our Lady of Victory Sanitarium.

**SECOND:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York (“NPCL”) and is a type B corporation as defined in Section 201 of the NPCL.

**THIRD:** The Corporation shall have the following purposes:

- (a) To establish, operate and maintain a general hospital in Ulster County, New York pursuant to Article 28 of the Public Health Law;

- (b) To participate, insofar as circumstances may warrant in any activity permitted by present law or future law designed to promote the general health of the community;
- (c) To carry on educational activities related to the delivery of health care services or the promotion of health which, in the opinion of the members of the Corporation's Board may be justified by the facilities, personnel, funds or other requirements that are or can be made available;
- (d) To solicit, receive and administer funds, contributions or grants from any source to be applied to charitable, educational and scientific purposes of the Corporation;
- (e) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations; and
- (f) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, including, but not limited to, those powers set forth in Section 202 of the NPCL, to the extent such purposes are purposes described in Section 509(a)(1), (2), or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404(a) through (n), (p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Restated Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, or a health maintenance organization or comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Restated Certificate of Incorporation, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal

revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;
2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;
3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or
4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

**FOURTH:** The Corporation shall have one member: HealthAlliance, Inc. (the "Member"). The Corporation shall have the primary responsibility for assuring its commitment to its charitable mission, the quality of care provided at its facilities and oversight of plant facilities, which may include the employment of operations staff, billing for Corporation services under the Corporation's provider numbers, and the initiation of proposed amendments to the Corporation's policies, procedures and bylaws, the addition and deletion of services and related matters. Subject to the foregoing responsibilities, with respect to the Corporation, the Member shall have the following powers:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between the Corporation and HealthAlliance Hospital Broadway Campus;
- Credential all licensed health care professionals to be providing services at the Corporation or its affiliates (subject to the adoption by the Corporation of amendments to its medical staff bylaws to the extent required to authorize such action);
- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Corporation and share in any and all

credentialing, quality assurance, risk management and peer review decisions of the Corporation;

- Elect and remove the members of the Board of Directors and board officers of the Corporation;
- Appoint and remove the corporate officers of the Corporation (which power may be delegated to the Member's chief executive officer) and approve the appointment of the chief executive officer of the Corporation;
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Corporation;
- Approve and may adopt the annual capital and operating budgets of the Corporation;
- Approve and may initiate the addition or deletion of services at the Corporation;
- Approve and may initiate the filing of certificate of need applications by the Corporation;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Corporation;
- Approve the incurrence of any debt by the Corporation;
- Approve any expenditure by the Corporation in aggregate per year above a threshold amount set by the Member that is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Corporation;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Corporation;
- Approve the sale by the Corporation of any assets outside the ordinary course of business or approved within the Corporation's budget;
- Assure that the Corporation remains a secular institution;  
and

- Exercise any power that is not specifically and explicitly reserved to the Corporation in this Restated Certificate of Incorporation or the bylaws of the Corporation or reserved to the Corporation by law or regulation.

**FIFTH:** The term of duration of the Corporation shall be perpetual.

**SIXTH:** The office of the Corporation within the State of New York is located in the County of Ulster.

**SEVENTH:** The Corporation hereby delegates to Vassar Brothers Hospital, a New York not-for-profit corporation, pursuant to Section 701(a) of the Not-For-Profit Corporation Law joint operational decision making authority over and responsibility with the Corporation for operation of an extension clinic in Ulster County, New York providing therapeutic radiology services (the "Therapeutic Radiology Extension Clinic"). The Corporation hereby accepts delegation of authority from Vassar Brothers Hospital for joint operational decision making authority over and responsibility with the Corporation for the Therapeutic Radiology Extension Clinic.

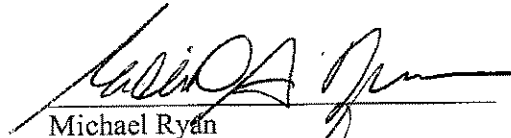
**EIGHTH:** No part of the assets, income or net earnings of the Corporation shall inure to the benefit of any member, director, trustee, officer or employee of the Corporation, or to any private individual, except as reasonable compensation for services rendered in effecting the purposes of the Corporation.


**NINTH:** In the event of dissolution of the Corporation, no distribution of any of the property or assets of the Corporation shall be made to any member, director, trustee, officer or employee of the Corporation, or to any private individual, but all of such property and assets shall be distributed to accomplish the charitable, educational and scientific purposes for which the Corporation is organized or distributed to such organizations as the Board of Directors of the Corporation shall direct and which qualify under Section 501(c)(3) of the Code, or the corresponding provision of any successor statute, subject to approval by a justice of the Supreme Court of the State of New York or any other court or judge having jurisdiction.

**TENTH:** The Secretary 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 shall mail a copy of any process against the Corporation served upon her/him is: 105 Mary's Avenue, Kingston, New York 12401.

**SIXTH:** This Amended and Restated Certificate of Incorporation was authorized by the vote of HealthAlliance, Inc., its sole member, and of its board of directors.

**IN WITNESS WHEREOF,** the undersigned, being at least eighteen (18) years of age, have subscribed and affirmed this Amended and Restated Certificate of Incorporation as true under the penalties of perjury on the date indicated next to each of their names:

  
\_\_\_\_\_  
Michael Ryan  
Chair of the Board of Directors  
Dated: NOVEMBER 1, 2012

  
\_\_\_\_\_  
Ward Todd  
Vice-Chair of the Board of Directors  
Dated: NOVEMBER 1, 2012

**NIXON PEABODY** LLP  
ATTORNEYS AT LAW

677 Broadway – 10<sup>th</sup> Floor  
Albany, New York 12207  
(518) 427-2650

PETER J. MILLOCK  
Direct Dial: (518) 427-2651  
Direct Fax: (866) 947-1239  
E-Mail: pmillock@nixonpeabody.com

November 2, 2012

James Dering, Esq.  
General Counsel  
New York State Department of Health  
Corning Tower, Room 2438  
Empire State Plaza  
Albany, NY 12237

**HAND DELIVERED**

**RECEIVED**

NOV 5 2012

**RE:** Health Alliance, Inc.

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

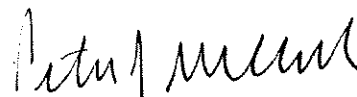
Dear Mr. Dering:

I have enclosed for your review and for approval of the PHHPC the Amended and Restated Certificates of Incorporation of Health Alliance, Inc. (“HA”), Benedictine Hospital (“BH”) and The Kingston Hospital (“TKH”). HA is the co-established operator of BH and TKH. In 2007, when BH and TKH aligned under HA, they agreed to maintain both hospitals in Kingston and to keep BH as a Catholic hospital and TKH as a secular hospital. General economic conditions and some economic factors specific to Kingston have now made it fiscally infeasible to sustain two hospitals in the community.

The documents submitted for your review provide that BH will no longer be a Catholic hospital and that the Benedictine Sisters will no longer be the sponsors of BH. This will facilitate the consolidation of clinical and administrative services at the BH campus. The clinical consolidation will be the subject of a future CON application.

Thank you for your consideration.

Sincerely,

  
Peter J. Millock

RECEIVED

NOV 02 2012

PJM/kjd  
Enclosures

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS



## RESOLUTION


RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Amended and Restated Certificate of Incorporation of Benedictine Hospital, dated November 1, 2012.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**M E M O R A N D U M**

**TO:** Public Health and Health Planning Council

**FROM:** James E. Dering, General Counsel 

**DATE:** November 8, 2012

**SUBJECT:** Proposed Amended and Restated Certificates of Incorporation of Health Alliance, Inc., Benedictine Hospital, and The Kingston Hospital

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Attached are the proposed Amended and Restated Certificates of Incorporation of Health Alliance, Inc., Benedictine Hospital, and The Kingston Hospital. Health Alliance, Inc. is a not-for-profit corporation and was established by the Public Health Council in 2009 as the co-operator of Benedictine Hospital and The Kingston Hospital, as well as Margaret Memorial Hospital. Benedictine Hospital and The Kingston Hospital, both not-for-profit corporation operators of hospitals licensed under Article 28 of the Public Health Law, seek approval to change their names to "HealthAlliance Hospital Mary's Avenue Campus" and "HealthAlliance Hospital Broadway Campus", respectively. The corporations' purposes will be amended as well to reflect the new names and to remove from the purposes of Benedictine Hospital its obligations as a Catholic hospital. Public Health and Health Planning Council approval for these changes of corporate names and purposes is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

Also attached is a letter dated November 2, 2012 from Peter J. Millock, attorney for the corporations. As explained in that letter, Benedictine Hospital and The Kingston Hospital intend to consolidate at a future date, subject to the Department's approval, and the changes in the corporations' name would reflect that consolidation. The letter also states that Benedictine Hospital will cease to be a Catholic hospital, as the Benedictine Sisters are withdrawing as sponsors. Further amendments to the provisions in each Certificate regarding corporate membership reflect this withdrawal.

Please note that the Amended and Restated Certificate of Incorporation of Health Alliance, Inc. also describes its membership of Health Alliance Senior Living Corp., the operator of Woodland Pond at New Paltz, a continuing care retirement community licensed under Article 46 of the Public Health Law ("CCRC"). The Public Health and Health Planning Council approved the establishment of Health Alliance, Inc. as the co-operator of the CCRC in July 2012.

The Department has no objection to the proposed name changes, and the proposed Amended and Restated Certificates of Incorporation are in legally acceptable form.

Attachments

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE KINGSTON HOSPITAL**

Under Section 805 of the Not-for-Profit Corporation Law

Thomas Collins and Ronald Myers, being, respectively, the Chairman and First Vice-Chairman of the Board of Directors of The Kingston Hospital, hereby certify:

**FIRST:** The name of the corporation is The Kingston Hospital (the "Corporation"). The name under which the Corporation was formed is The City of Kingston Hospital.

**SECOND:** The Certificate of Incorporation of the Corporation was filed by the Department of State on July 30, 1891 pursuant to Chapter 95 of the Laws of 1889 of the State of New York.

**THIRD:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("NPCL"). The Corporation is a type B corporation as defined in Section 201 of the NPCL and shall remain a type B corporation after this Restated Certificate of Incorporation is effectuated.

**FOURTH:** The Certificate of Incorporation of the Corporation is amended to effect the following amendments pursuant to the NPCL:

1. Paragraph "FIRST," stating the name of the Corporation, is hereby amended to change the name and to read in full as follows:

"FIRST: The name of the corporation is HealthAlliance Hospital Broadway Campus (the "Corporation"). The name under which the Corporation was formed is The City of Kingston Hospital."

2. Paragraph "THIRD," stating the objects or purposes of the Corporation is hereby amended to change the purposes of the Corporation. Paragraph THIRD, as amended and restated, shall read in full as follows:

"THIRD: The Corporation shall have the following purposes:

- (a) To establish, operate and maintain a general hospital in Ulster County, New York pursuant to Article 28 of the Public Health Law;
- (b) To promote and carry on scientific research related to the care of the sick and injured in so far as, in the opinion of the Board of Directors, such research can be carried on in or in connection with the Corporation;
- (c) To participate so far as circumstances may warrant in any activity designed and carried on to promote the general health of the community;
- (d) To solicit, receive and administer funds, contributions or grants from any source to be applied to charitable, educational and scientific purposes of the Corporation;
- (e) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations; and
- (f) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, including, but not limited to, those powers set forth in Section 202 of the NPCL, to the extent such purposes are purposes described in Section 509(a)(1), (2), or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404(a) through (n), (p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Restated Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, or a health maintenance organization or comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Restated Certificate of Incorporation, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the Code;
2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;
3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code;  
or
4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

3. Paragraph "FOURTH," naming the sole member of the Corporation and reserving certain powers to such member, is hereby amended and to read in full as follows:

"FOURTH: The Corporation shall have one member: HealthAlliance, Inc. (the "Member"). The Corporation shall have the primary responsibility for assuring its commitment to its charitable mission, the quality of care provided at its facilities and oversight of plant facilities, which may include the employment of operations staff, billing for services under the Corporation's provider numbers, the initiation of proposed amendments to the Corporation's policies, procedures and bylaws, and the addition and deletion of services and related matters. Subject to the foregoing responsibilities, the Member shall have the following powers with respect to the Corporation:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between the Corporation and HealthAlliance Hospital Mary's Avenue Campus;
- Credential all licensed health care professionals who will provide services at the Corporation or its affiliates (subject to the adoption by the Corporation of amendments to its medical staff bylaws to the extent required to authorize such action);
- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the

Corporation and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Corporation;

- Elect and remove the members of the Board of Directors and board officers of the Corporation;
- Appoint and remove the corporate officers of the Corporation (which power may be delegated to the Member's chief executive officer) and approve the appointment of the chief executive officer of the Corporation;
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Corporation;
- Approve and may adopt the annual capital and operating budgets of the Corporation;
- Approve and may initiate the addition or deletion of services at the Corporation;
- Approve and may initiate the filing of certificate of need applications by the Corporation;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Corporation;
- Approve the incurrence of any debt by the Corporation;
- Approve any expenditure by the Corporation in aggregate per year above a threshold amount set by the Member which is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Corporation;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Corporation;
- Approve the sale by the Corporation of any assets outside the ordinary course of business or approved within the Corporation's budget;
- Assure that the Corporation remains a secular institution; and
- Exercise any power that is not specifically and explicitly reserved to the Corporation in this Certificate of Amendment of the Certificate of

Incorporation or the bylaws of the Corporation or reserved to the Corporation by law or regulation.”

4. Paragraph “EIGHTH,” concerning the dissolution of the Corporation, is hereby amended to change the name of the board and to read in full as follows:

“EIGHTH: In the event of dissolution of the Corporation, no distribution of any of the property or assets of the Corporation shall be made to any member, director, trustee, officer or employee of the Corporation, or to any private individual, but all of such property and assets shall be distributed to accomplish the charitable, educational and scientific purposes for which the Corporation is organized or distributed to such organizations as the Board of Directors of the Corporation shall direct and which qualify under Section 501(c)(3) of the Code, or the corresponding provision of any successor statute, subject to approval by a justice of the Supreme Court of the State of New York or any other court or judge having jurisdiction.”

**FIFTH:** The text of the Certificate of Incorporation is hereby restated, as amended, to read in full as follows:

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
HEALTHALLIANCE HOSPITAL BROADWAY CAMPUS**

**FIRST:** The name of the corporation is HealthAlliance Hospital Broadway Campus (the “Corporation”). The name under which the Corporation was formed is The City of Kingston Hospital.

**SECOND:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York (“NPCL”) and is a type B corporation as defined in Section 201 of the NPCL.

**THIRD:** The Corporation shall have the following purposes:

- (a) To establish, operate and maintain a general hospital in Ulster County, New York pursuant to Article 28 of the Public Health Law;
- (b) To promote and carry on scientific research related to the care of the sick and injured in so far as, in the opinion of the Board of Directors, such research can be carried on in or in connection with the Corporation;



- (c) To participate so far as circumstances may warrant in any activity designed and carried on to promote the general health of the community;
- (d) To solicit, receive and administer funds, contributions or grants from any source to be applied to charitable, educational and scientific purposes of the Corporation;
- (e) To exercise all rights and privileges as a member of one or more other not-for-profit corporations and as a shareholder of one or more business corporations; and
- (f) To take any and all actions which are incidental to and not inconsistent with the foregoing purposes of the Corporation and which are lawful for not-for-profit corporations, including, but not limited to, those powers set forth in Section 202 of the NPCL, to the extent such purposes are purposes described in Section 509(a)(1), (2), or (3) of the Internal Revenue Code of 1986, as amended (the "Code"). Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in NPCL Section 404(a) through (n), (p) through (s), (u) and (v), or Social Services Law Section 460-a. Nothing contained in this Restated Certificate of Incorporation shall authorize the Corporation to establish, operate or maintain a home care services agency, a hospice, or a health maintenance organization or comprehensive health services plan as provided for by Articles 36, 40 and 44 respectively of the Public Health Law. Notwithstanding any other provision of this Restated Certificate of Incorporation, the Corporation is organized exclusively for charitable, educational and scientific purposes, and the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code.

No substantial part of the activities of the Corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation.

In the event that the Corporation shall at any time be a private foundation within the meaning of Section 509 of the Code, or the corresponding provision of any future United States internal revenue law, the Corporation, as long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to be subject to the tax on undistributed income imposed by Section 4942 of the Code and shall not engage in any of the following acts:

1. Any act of self-dealing as defined in Section 4941(d) of the

Code;

2. Retaining any excess business holdings as defined in Section 4943(c) of the Code;
3. Making any investments in such manner as to subject the corporation to tax under Section 4944 of the Code; or
4. Making any taxable expenditures as defined in Section 4945(d) of the Code.

**FOURTH:** The Corporation shall have one member: HealthAlliance, Inc. (the "Member"). The Corporation shall have the primary responsibility for assuring its commitment to its charitable mission, the quality of care provided at its facilities and oversight of plant facilities, which may include the employment of operations staff, billing for services under the Corporation's provider numbers, the initiation of proposed amendments to the Corporation's policies, procedures and bylaws, and the addition and deletion of services and related matters. Subject to the foregoing responsibilities, the Member shall have the following powers with respect to the Corporation:

- Adopt strategic plans, including, without limitation, plans for the reallocation of services between the Corporation and HealthAlliance Hospital Mary's Avenue Campus;
- Credential all licensed health care professionals who will provide services at the Corporation or its affiliates (subject to the adoption by the Corporation of amendments to its medical staff bylaws to the extent required to authorize such action);
- Supervise, oversee, monitor and participate in the credentialing, quality assurance, risk management and peer review activities of the Corporation and share in any and all credentialing, quality assurance, risk management and peer review decisions of the Corporation;
- Elect and remove the members of the Board of Directors and board officers of the Corporation;
- Appoint and remove the corporate officers of the Corporation (which power may be delegated to the Member's chief executive officer) and approve the appointment of the chief executive officer of the Corporation;
- Approve and may initiate the adoption, deletion and amendment of the bylaws of the Corporation;

- Approve and may adopt the annual capital and operating budgets of the Corporation;
- Approve and may initiate the addition or deletion of services at the Corporation;
- Approve and may initiate the filing of certificate of need applications by the Corporation;
- Negotiate and approve all payor, managed care, vendor and equipment contracts for the Corporation;
- Approve the incurrence of any debt by the Corporation;
- Approve any expenditure by the Corporation in aggregate per year above a threshold amount set by the Member which is not included in an approved capital or operating budget;
- Approve and may initiate the commencement and settlement of any litigation by the Corporation;
- Approve and may initiate the formation of or the alignment or affiliation with any corporations or other entities;
- Approve the dissolution of the Corporation;
- Approve the sale by the Corporation of any assets outside the ordinary course of business or approved within the Corporation's budget;
- Assure that the Corporation remains a secular institution; and
- Exercise any power that is not specifically and explicitly reserved to the Corporation in this Certificate of Amendment of the Certificate of Incorporation or the bylaws of the Corporation or reserved to the Corporation by law or regulation.

**FIFTH:** The term of duration of the Corporation shall be perpetual.

**SIXTH:** The office of the Corporation within the State of New York is located in the County of Ulster.

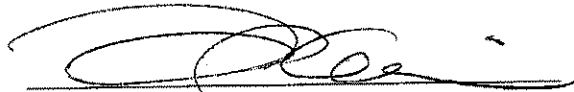
**SEVENTH:** No part of the assets, income or net earnings of the Corporation shall inure to the benefit of any member, director, trustee, officer or employee of the Corporation, or to any private individual, except as reasonable compensation for services rendered in effecting the purposes of the Corporation.

**EIGHTH:** In the event of dissolution of the Corporation, no distribution of any of the property or assets of the Corporation shall be made to any member, director, trustee, officer or employee of the Corporation, or to any private individual, but all of such property and assets shall be distributed to accomplish the charitable, educational and scientific purposes for which the Corporation is organized or distributed to such organizations as the Board of Directors of the Corporation shall direct and which qualify under Section 501(c)(3) of the Code, or the corresponding provision of any successor statute, subject to approval by a justice of the Supreme Court of the State of New York or any other court or judge having jurisdiction.

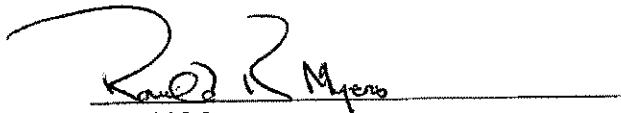
**NINTH:** The Secretary of the State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon her/him is: 396 Broadway, Kingston, New York 12401.

**SIXTH:** This Amended and Restated Certificate of Incorporation was authorized by the vote of HealthAlliance, Inc., its sole member, and of its board of directors.

**IN WITNESS WHEREOF,** the undersigned, being at least eighteen (18) years of age, have subscribed and affirmed this Amended and Restated Certificate of Incorporation as true under the penalties of perjury on the date indicated next to each of their names:



Thomas Collins  
Chairman of the Board of Directors  
Dated: NOVEMBER 1, 2012



Ronald Myers  
First Vice-Chairman of the Board of Directors  
Dated: NOVEMBER 2, 2012

**NIXON PEABODY**LLP  
ATTORNEYS AT LAW

677 Broadway – 10<sup>th</sup> Floor  
Albany, New York 12207  
(518) 427-2650

PETER J. MILLOCK  
Direct Dial: (518) 427-2651  
Direct Fax: (866) 947-1239  
E-Mail: pmillock@nixonpeabody.com

November 2, 2012

James Dering, Esq.  
General Counsel  
New York State Department of Health  
Corning Tower, Room 2438  
Empire State Plaza  
Albany, NY 12237

**HAND DELIVERED**

RECEIVED

NOV 5 2012

**RE:** Health Alliance, Inc.

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

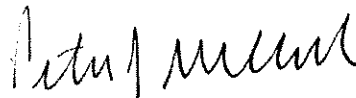
Dear Mr. Dering:

I have enclosed for your review and for approval of the PHHPC the Amended and Restated Certificates of Incorporation of Health Alliance, Inc. ("HA"), Benedictine Hospital ("BH") and The Kingston Hospital ("TKH"). HA is the co-established operator of BH and TKH. In 2007, when BH and TKH aligned under HA, they agreed to maintain both hospitals in Kingston and to keep BH as a Catholic hospital and TKH as a secular hospital. General economic conditions and some economic factors specific to Kingston have now made it fiscally infeasible to sustain two hospitals in the community.

The documents submitted for your review provide that BH will no longer be a Catholic hospital and that the Benedictine Sisters will no longer be the sponsors of BH. This will facilitate the consolidation of clinical and administrative services at the BH campus. The clinical consolidation will be the subject of a future CON application.

Thank you for your consideration.

Sincerely,



Peter J. Millock

RECEIVED

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PJM/kjd  
Enclosures

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of December, 2012, approves the filing of the Amended and Restated Certificate of Incorporation of The Kingston Hospital, dated November 1, 2012.

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Oceanview Manor Home for Adults, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For Profit Corporation  
Application Number: 2011-L

Description of Project:

Oceanview Manor Home for Adults, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Oceanview Manor Home for Adults, Inc. is an existing 176 bed adult home. Plans are to convert 44 adult home beds to assisted living program (ALP) beds and construct 24 additional new ALP beds for a total of 68 ALP beds with a new LHCSA associated with the ALP.

Oceanview Manor Home for Adults, Inc. has authorized 200 shares of stock which are owned as follows: Benjamin Landa owns 100 shares and Lisa Rosenfeld owns 100 shares.

The members of the Board of Directors of Oceanview Manor Home for Adults, Inc. are as follows:

Benjamin Landa, President  
Assistant Administrator, New Surfside Nursing Home

Affiliations:

Excellent Home Care Services, LLC (CHHA),  
Avalon Gardens Rehabilitation and Health Care Center (RHCF),  
Bay Park Center For Nursing and Rehabilitation, LLC (RHCF),  
Bayview Nursing and Rehabilitation Center (RHCF),  
Brookhaven Rehabilitation And Health Care Center (RHCF),  
Eastchester Rehabilitation and Health Care Center, LLC (RHCF),  
Forest Hills Care Center (RHCF),  
Garden Care Center (RHCF),  
Golden Gate Rehabilitation and HealthCare Center (RHCF),  
Grace Plaza Nursing And Rehabilitation Center (RHCF),  
The Hamptons Center for Rehabilitation and Nursing (RHCF),  
Meadow Park Rehabilitation and Health Care Center (RHCF),  
New Surfside Nursing Home (RHCF),  
Rockville Skilled Nursing and Rehabilitation Center (RHCF),  
Split Rock Rehabilitation and Health Care Center (RHCF),  
Spring Creek Rehabilitation and Health Care Center, formerly Willoughby Rehabilitation and Health Care Center (RHCF),  
Tarrytown Hall Care Center (RHCF),  
Woodmere Rehabilitation and Health Care Center (RHCF),  
Privilege Care Diagnostic and Treatment Center (D&TC),  
Oceanview Manor Home for Adults (ACF),

Hawthorn Health Multicare Center for Living (RHCF) (Receiver)  
Harbour Health Multicare Center for Living (RHCF) (Receiver)

Lisa Rosenfeld, Secretary  
Administrator, Oceanview Manor Home for Adults, Inc. (ACF)

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 Kings County from an office located at 3010 West 33<sup>rd</sup> Street, Brooklyn, New York 11224.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Speech Language Pathology	Respiratory Therapy	Housekeeper
Audiology	Nutrition	

A ten year review of the following facilities was performed as part of this review:

Avalon Gardens Rehabilitation and Health Care Center  
Bay Park Center for Nursing and Rehabilitation  
Bayview Nursing and Rehabilitation Center  
Brookhaven Rehabilitation Healthcare Center  
Eastchester Rehabilitation and Health Care Center  
Forest Hills Care Center  
Garden Care Center  
Golden Gate Rehabilitation and Health Care Center  
Grace Plaza Nursing and Rehabilitation Center  
Meadow Park Rehabilitation and Health Care Center  
New Surfside Nursing Home  
Rockville Residence Manor  
Split Rock Rehabilitation and Health Care Center  
Tarrytown Hall Care Center  
The Hamptons Center for Rehabilitation and Nursing  
Spring Creek Rehabilitation and Health Care Center, formerly Willoughby Rehabilitation and Health Care Center (RHCF),  
Woodmere Rehabilitation and Health Care Center  
Privilege Care Diagnostic and Treatment Center  
Oceanview Manor Home for Adults, Inc.  
Excellent Home Care Services, LLC

The Division of Primary and Acute Care Certification and Surveillance reviewed the compliance history of the affiliated diagnostic and treatment center for the time period specified as the affiliation. It has been determined that the affiliated diagnostic and treatment center has provided a substantially consistent high level of care.

The Division of Residential Services reviewed the compliance history of all affiliated nursing homes for the time period 2002 to present, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken against Bayview Nursing and Rehabilitation Center in 2005 based on a November 2004 survey citing violations in Quality of Life: Environment, Quality of Care: Pressure Sores and Quality of Care: Accidents. This enforcement was resolved with a \$7,000 civil penalty. An additional enforcement action was taken against Bayview Nursing and Rehabilitation Center in 2007 based on a December 2005 survey citing a violation in Comprehensive Care Plans. This enforcement action was resolved with a \$2,000 civil penalty. An additional enforcement action was taken against Bayview Nursing and Rehabilitation Center in 2011 based on a December 2010 survey citing a violation in Quality of Care: Pressure Sores. This enforcement action was resolved with a \$10,000 civil penalty.



An enforcement action was taken against Garden Care Center in 2005 based on a June 2003 survey citing violations in Quality of Care: Pressure Sores and Quality of Care: Enteral Feeding Tubes. This enforcement was resolved with a \$2,000 civil penalty. An additional enforcement action was taken against Garden Care Center in 2007 based on a May 2007 survey citing violations in Quality of Care: Highest Practicable Potential and Quality of Care: Adequate Hydration. This enforcement was resolved with a \$4,000 civil penalty.

An enforcement was taken against Split Rock Rehabilitation and Health Care Center in 2007 based on a December 2005 survey citing violations in Resident Behavior and Facility Practices: Staff Treatment of Residents, Resident Assessment and Care Planning: Comprehensive Care Plans and Quality of Care: Special Needs. This enforcement was resolved with a \$6,000 civil penalty.

An enforcement action was taken against Willoughby Rehabilitation and Health Care Center in 2006 based on an October 2003 survey citing a violation in Resident Behavior and Facility Practices: Staff Treatment of Residents. This enforcement action was resolved with a \$2,000 civil penalty.

An enforcement action was taken against Rockville Skilled Nursing and Rehabilitation Center in 2007 based on August 2006 and March 2007 surveys citing violations in Quality of Care: Mental and Psychological Functioning, Quality of Care: Accidents, Residents' Rights: Right to Clinical Care and Treatment, Quality of Life: Social Services, Resident Assessment and Care Planning: Comprehensive Care Plans and Medical Services: Physician Supervision (all 8/28/06) and Resident Assessment and Care Planning: Comprehensive Care Plans (3/29/07). This enforcement action was resolved with a \$7,500 civil penalty.

An enforcement action was taken against Eastchester Rehabilitation and Health Care Center in 2008 based on a January 2008 survey citing violations in Resident Behavior and Facility Practices: Staff Treatment of Residents. This enforcement action was resolved with a \$2,000 civil penalty.

An enforcement action was taken against Avalon Gardens Rehabilitation and Health Care Center in 2009 based on a May 2008 survey citing violations in Quality of Care: Accidents. This enforcement action was resolved with a \$2,000 civil penalty. An additional enforcement action was taken against Avalon Gardens Rehabilitation and Health Care Center in 2012 based on a July 2011 survey citing violations in Quality of Care: Highest Practicable Potential and Administration. This enforcement action was resolved with a \$4,000 civil penalty.

An enforcement action was taken against Golden Gate Rehabilitation and Health Care Center in 2009 based on a June 2008 abbreviated survey citing violations in Quality of Care: Accidents and Organization and Administration. This enforcement action was resolved with a \$20,000 civil penalty.

An enforcement action was taken against The Hamptons Center for Rehabilitation and Nursing in 2011 based on a July 2010 survey citing violations in Quality of Care: Highest Practicable Potential. This enforcement action was resolved with a \$10,000 civil penalty.

An enforcement action was taken against Bay Park Center for Nursing and Rehabilitation, LLC in 2011 based on a December 2009 survey citing violations in Quality of Care: Highest Practicable Potential and Quality of Care: Nutrition Status. This enforcement action was resolved with a \$4,000 civil penalty. An additional enforcement action was taken against Bay Park Center for Nursing and Rehabilitation in 2012 based on a February 2011 survey citing violations in Quality of Care: Accidents, Quality of Care: Nutrition, Resident Behavior and Facility Practices: Staff Treatment of Residents (Development of Resident Abuse Policies), Resident Behavior and Facility Practices: Staff Treatment of Residents (Freedom from Resident Abuse) and Certified Nurse Aide Competency. This enforcement action was resolved with a \$18,000 civil penalty.

The Division of Assisted Living reviewed the compliance history of the affiliated adult care facility for the time period 2002 to present, or for the time period specified as the affiliation, whichever applied.

An enforcement action was taken against Oceanview Manor Home for Adults in 2005 based on February 2002 and August 2002 surveys citing violations in Housekeeping and Maintenance, and February 2004 and May 2004 surveys citing violations in Medication management, Personnel and Smoke/Fire Protection. This enforcement action was resolved with a \$1,500 civil penalty.

The Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agency for the time period 2002 to present, or for the time period specified as the affiliation, whichever applied.

A Settlement Agreement was signed in December 2009 between New York State Office of the Attorney General and Excellent Home Care Services, LLC citing Excellent Home Care Services' submission of claims to Medicaid and receipt of payments from Medicaid for home health aide services purportedly provided by individuals who presented certifications falsely indicating their satisfactory completion of a required home health aide training program, when such individuals had, in fact, never received the required training, and for submission of claims to Medicaid for home health aide services all or a portion of which were not rendered as claimed. Excellent Home Care Services, LLC has paid a Total Medicaid Settlement Amount of \$3,730,000.

It has been determined that the affiliated nursing homes, certified home health agency and adult care facility have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

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: October 2, 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 6th day of December, 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.

<u>NUMBER:</u>	<u>FACILITY:</u>
2019 L	Angela Dawn Donahue d/b/a Quality Home Health Care (Otsego County)
2012 L	Care Connection Home Care, LLC (Nassau, Queens, Suffolk Counties)
1941 L	D2 Enterprises, Inc. d/b/a Home Helpers #58507 (Westchester County)
1663 L	Finest Home Care Corp. (Bronx, Richmond, Kings, Westchester, New York, Queens Counties)
1921 L	Golden Touch Home Health Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)

1984 L Goldenhearts Elderly Care Services, Inc.  
(Bronx, New York, Kings, and Queens Counties)

1978 L Health and Comfort Home Care, Inc.  
(New York, Kings, Queens, Bronx, and Richmond  
Counties)

1697 L Jacqueline Asante d/b/a Van Cortlandt Home  
Healthcare Agency  
(Bronx, County)

1809 L LH Wellbeing Care, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and  
Queens Counties)

2002 L Paraclete Home Health Care, LLC  
(Nassau, Suffolk and Queens Counties)

1997 L PSC Community Support Services, Inc. d/b/a Blue  
Parasol  
(New York, Kings, Queens, Bronx and Richmond  
Counties)

2014 L Responsible Care Staffing, Inc.  
(Bronx and New York Counties)

2003 L MJO Enterprises, Inc. d/b/a Right at Home  
(Nassau and Queens Counties)

2026 L SARA Companion Services, Inc.  
(Nassau, Suffolk, Queens, Kings, New York, Bronx,  
and Richmond Counties)

1934 L Today's Homecare, Inc.  
(Bronx, Kings, New York, Queens and Richmond  
Counties)

2044 L York Healthcare, LLC  
(Bronx, Richmond, New York, Nassau, Kings, and  
Queens Counties)

2011 L Oceanview Manor Home for Adults, Inc.  
(Kings County)

- 1988 L Advance Home Care, LLC d/b/a Sincere Care Agency  
(Bronx, Queens, Kings, Richmond, Nassau and New  
York Counties)
- 1993 L Human Care, LLC  
(New York, Bronx, Kings, Richmond, Queens, and  
Nassau Counties)
- 2012 L Light 101, Inc.  
(Bronx, Queens, Kings, Richmond, New York and  
Westchester Counties)

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

**December 6, 2012**

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**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

**Residential Health Care Facility – Establish/Construct**

**Exhibit #24**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C.</u> <u>Recommendation</u></b>
1.	122147 B	VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center (Broome County) Mr. Fensterman – Abstained at the EPRC meeting	Contingent Approval



# Public Health and Health Planning Council

Project # 122147-B

**VRNC, LLC**

**d/b/a Vestal Park Rehabilitation and Nursing Center**

**County: Broome (Vestal)**

**Program: Residential Health Care Facility**

**Purpose: Establishment and Construction**

**Submitted: September 25, 2012**

## Executive Summary

### Description

VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center (Vestal Park) requests approval to become established as the operator of Vestal Nursing Center, a 180-bed residential health care facility (RHCF) located at 860 Old Vestal Road, Vestal. In addition, VRNC, LLC seeks approval for the construction of a 160-bed replacement facility, resulting in a decrease of 20 RHCF beds and the certification and construction of a 31-slot adult day health care program (ADHCP). The new facility will be located on an approximately 19-acres at 1501 Rt. 26 South, Vestal.

In 2011, flooding from Tropical Storm Lee and Hurricane Irene rendered the 180-bed Vestal Park uninhabitable, and the facility has since been operating in temporary quarters at two separate locations in Broome County. VRNC, LLC has received a HEAL-NY Phase 21 award for the development of a 160-bed RHCF and 40-bed Assisted Living Program.

VRNC, LLC has been the receiver of the Vestal Park Rehabilitation and Nursing Center facility since June 2011. VJNH, LLC d/b/a Vestal Park Rehabilitation and Nursing Center, entered into an Operations Transfer Agreement with VRNC, LLC on June 10, 2011, to sell and acquire the operating interests of the 180-bed facility. The acquisition price for the operation is \$10.00, along with the assumption of specified assets and liabilities of the facility.

Ownership of the operation will consist of the following proposed members and their percentages for the operations:

<u>Proposed Member</u>	<u>Interests</u>
David Camerota	00.1%
Efraim Steif	39.9%
Uri Koenig	60.0%

All three proposed members have ownership interest in the following RHCFS: Bridgewater Center for Rehabilitation & Nursing (Binghamton); Central Park Rehabilitation and Nursing Center (Syracuse); and Pine Valley Center for Rehabilitation and Nursing (Spring Valley). The proposed members are also receivers in seven additional RHCFS.

Total project costs are estimated at \$37,684,714.

DOH Recommendation  
Contingent approval.

### Need Summary

In decertifying 20 RHCF beds, the facility which will help reduce excess RHCF bed capacity in Broome County.

### Program Summary

The establishment and construction of a new Vestal Park Rehabilitation and Nursing Center will permit the return of the displaced residents currently residing in sub-optimal living space. The design of the nursing home shows sensitivity to the needs of the residents, and embraces contemporary principles of nursing care.

### Financial Summary

Project costs will be met with a \$7,373,237 HEAL-NY Phase 21 grant, \$265,477 in equity and a \$30,046,000 HUD mortgage.

Budget:	<i>Revenues:</i>	\$ 12,612,201
	<i>Expenses:</i>	<u>12,292,120</u>
	<i>Gain/(Loss):</i>	\$ 320,081

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. 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]
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 implement of the plan. The plan should include but not be limited to:
    - o Information on activities relating to a-c above; and
    - o Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - o 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. Decertification of the temporarily certified beds that were implemented to house Vestal Park Rehabilitation and Nursing Center patients. Decertification must be completed prior to the facility transitioning residents back to the new facility. [RNR]
5. Submission of and programmatic review and approval of the final floor plans. [LTC]
6. Submission of a commitment acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning, of approval of final plans and specifications and before the start of construction. Included in the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
7. Submission of an executed working capital loan agreement that is acceptable to the Department. [BFA]
8. Submission of a land appraisal by a member of the Members Appraisal Institute that is acceptable to the Department. [BFA]
9. Submission of an executed Bill of Sale 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 the applicant's executed Certificate of Amendment of its Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]



13. Submission of evidence of site control, acceptable to the Department. [BFA, CSL]

**Approval conditional upon:**

1. Bridgewater Center for Rehabilitation and Nursing, LLC will decertify 25 residential health care facility beds, reducing its capacity from 356 residential health care facility beds to 331 residential health care facility beds upon completion of the construction of Vestal Park Rehabilitation and Nursing Center's 160-bed residential health care facility and the adjoining 40-bed assisted living program. [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]
3. The applicant shall complete construction by October 31, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**December 6, 2012.**

## Need Analysis

### Background

VRNC, LLC dba Vestal Park Rehabilitation and Nursing Center seeks to be established as the owner of Vestal Park Rehabilitation and Nursing Center. In August 2011, Vestal Park Rehabilitation and Nursing Center, located at 860 Old Vestal Road, Vestal, in Broome County, was forced to evacuate 173 patients and transition them to two separate facilities, Willow Point Nursing Home and Greater Binghamton Health Center, due to flooding that made the facility uninhabitable. The new owners of the facility, VRNC, seek to replace the 180-bed RHCF with a new 160-bed RHCF and a 40-bed assisted living program, to be located at 1501 Rte. 26, South Vestal. There will be a reduction of 20 RHCF beds in Broome County following project completion.

### Analysis

Vestal Park Rehabilitation and Nursing Center's occupancy was 91.94 percent in 2008 and 93.2 percent in 2009. The facility did not report in 2010.

<u>RHCF Occupancy</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Vestal Park Rehab & Nursing Center	91.94%	93.15%	Did not report
Broome County	93.07%	92.67%	94.71%

The 2016 Projected Bed Need for Broome County is 1,380 with a total RHCF resource of 1,648 beds, resulting in an excess of 268 beds.

<u>RHCF Bed Need</u>	<u>Broome County</u>
2016 Projected need	1,380
Current Beds	1,648
Beds under Construction	0
Total Resources	1,648
Unmet Need	- 268

Regulations indicate that the Medicaid patient admissions standard shall be 75 percent 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 percent 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 percent of the planning area percentage of Health Systems Agency percentage, whichever is applicable.

Vestal Park Rehabilitation and Nursing Center did not meet the 75 percent planning average for 2009 or 2010 with reported Medicaid admissions of 0.81 percent in 2009 and 0.45 percent in 2010. The 75 percent planning averages for Broome County for 2009 and 2010 were 7.92 percent and 14.62 percent, respectively.

### Recommendation

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

# Programmatic Analysis

## Facility Information

	<i>Existing</i>	<i>Proposed</i>
<i>Facility Name</i>	Vestal Park Rehabilitation and Nursing Center	Same
<i>Address</i>	*830 Old Vestal Road Vestal, NY 13850	1501 Route 26 South Vestal, NY 13805
<i>RHCF Capacity</i>	**180	160
<i>ADHCP Capacity</i>	50	Same
<i>Type Of Operator</i>	Limited Liability Company	Same
<i>Class Of Operator</i>	Proprietary	Same
<i>Operator</i>	VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center <u>Members</u> Uri Koenig 60.0% Efraim Steif 39.9% -- Managing Members David Camerota 0.1%  Voluntary receivership effective June 19, 2011  Formerly VJNH, Inc. d/b/a Vestal Nursing Center	Same

*\*Site is closed; temporary bed units operated at Binghamton Health Center and Willow Point Nursing Home*

*\*\*Only 110 beds currently in operation*

## Character and Competence

- FACILITIES REVIEWED:

### Nursing Homes

Pine Valley Center for Rehabilitation and Nursing	2/4/04 to present
Bridgewater Center for Rehabilitation and Nursing	2/1/05 to present
Central Park Rehabilitation and Nursing Center	11/24/08 to present

### Receiverships

Westchester Center for Rehabilitation and Nursing	1/1/03 to 2006
Chestnut Park Center for Rehabilitation and Nursing	6/19/11 to present
Cortland Park Center for Rehabilitation and Nursing	6/19/11 to present
Colonial Park Center for Rehabilitation and Nursing	6/19/11 to present
Highland Park Center for Rehabilitation and Nursing	6/19/11 to present
Hudson Park Center for Rehabilitation and Nursing	6/19/11 to present
Vestal Park Center for Rehabilitation and Nursing	6/19/11 to present
Riverside Center for Rehabilitation and Nursing	3/19/12 to present
Capstone Center for Rehabilitation and Nursing	3/19/12 to present

### Adult Homes

Riverside Manor	9/1/09 to 7/1/10
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- INDIVIDUAL BACKGROUND REVIEW:

**Uri Koenig** is a New York State Certified Public Account with license in good standing employed by JH Koenig & Co in New York. Mr. Koenig discloses the following nursing home ownership interests.

Bridgewater Center for Rehabilitation	8/1/06 to present
Pine Valley Center for Rehabilitation and Nursing	1/1/08 to present
Central Park Rehabilitation and Nursing Center	3/1/12 to present

Mr. Koenig has served as the Court-appointed receiver for the following nursing homes.

Chestnut Park Center for Rehabilitation and Nursing	6/19/11 to present
Cortland Park Center for Rehabilitation and Nursing	6/19/11 to present
Colonial Park Center for Rehabilitation and Nursing	6/19/11 to present
Highland Park Center for Rehabilitation and Nursing	6/19/11 to present
Hudson Park Center for Rehabilitation and Nursing	6/19/11 to present
Vestal Park Center for Rehabilitation and Nursing	6/19/11 to present
Riverside Center for Rehabilitation and Nursing	3/19/12 to present
Capstone Center for Rehabilitation and Nursing	3/19/12 to present

**Efraim Steif** is a licensed nursing home administrator in good standing in the States of New York and New Jersey. Mr. Steif is currently the President of FRS Healthcare Consultants, Inc., and served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. Mr. Steif has disclosed the following nursing home ownership interests.

Pine Valley Center for Rehabilitation and Nursing (and receivership)	2/4/04 to present
Bridgewater Center for Rehabilitation and Nursing (and receivership)	2/1/05 to present
Central Park Rehabilitation and Nursing Center (and receivership)	11/24/08 to present

Mr. Steif has served as the Court-appointed receiver for the following nursing homes.

Westchester Center for Rehabilitation and Nursing	1/1/03 to 2006
Chestnut Park Center for Rehabilitation and Nursing	6/19/11 to present
Cortland Park Center for Rehabilitation and Nursing	6/19/11 to present
Colonial Park Center for Rehabilitation and Nursing	6/19/11 to present
Highland Park Center for Rehabilitation and Nursing	6/19/11 to present
Hudson Park Center for Rehabilitation and Nursing	6/19/11 to present
Vestal Park Center for Rehabilitation and Nursing	6/19/11 to present
Riverside Center for Rehabilitation and Nursing	3/19/12 to present
Capstone Center for Rehabilitation and Nursing	3/19/12 to present

**David Camerota** is a licensed nursing home administrator in good standing currently employed as Administrator of Record at Central Park Rehabilitation and Nursing Center. Mr. Camerota has served nearly continuously as administrator for the past eleven years including service at Heritage Health Care Center in Utica, Sunnyside Care Center in Syracuse and Valley View Manor Nursing Home in Norwich. Mr. Camerota has disclosed the following nursing home ownership interests.

Pine Valley Center for Rehabilitation and Nursing	1/1/08 to present
Central Park Rehabilitation and Nursing Center	3/1/12 to present

**Character and Competence – Analysis:**

No negative information has been received concerning the character and competence of the applicants.

The review of operations of Bridgewater Center for Rehabilitation, Pine Valley Center for Rehabilitation and Nursing and Westchester Center for Rehabilitation and Nursing results in a conclusion of substantially consistent high level of care since there were no enforcements.

The review of operations of the receiverships for Chestnut Park Center for Rehabilitation and Nursing, Cortland Park Center for Rehabilitation and Nursing, Colonial Park Center for Rehabilitation and Nursing, Highland Park Center for Rehabilitation and Nursing, Hudson Park Center for Rehabilitation and Nursing, Vestal Park Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, and Capstone Center for Rehabilitation and Nursing results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Central Park Rehabilitation and Nursing Center for the period reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

The review of operations for Central Park Rehabilitation and Nursing Center results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of Riverside Manor results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Program Review

VRNC, LLC d/b/a Vestal Park Rehabilitation and Nursing Center, (Vestal Park) an existing limited liability company, requests approval to establish and construct a 160 bed nursing home with a 31 slot adult day health care program in Vestal. The applicant will also construct an attached 40 bed assisted living program which will be reviewed in a separate application. The applicant has received a HEAL 21 grant to finance the construction of the SNF/ALP. VRNC, LLC has been operating Vestal Park as a receivership since 2011.

Vestal Rehabilitation and Nursing Center was a 180 bed nursing home operated by VJNH, Inc., a proprietary corporation whose principal stockholder was Anthony Salerno (deceased). In June, 2011 VRNC, LLC, the subject entity, was appointed receiver of the nursing home, which was subsequently renamed Vestal Park Center for Rehabilitation and Nursing. Shortly thereafter, disastrous flooding spawned by Hurricane Irene and Tropical Storm Lee struck the Binghamton area, and Vestal Park, which was located on the banks of the Susquehanna River, was rendered uninhabitable. All residents of the nursing home were evacuated into area health facilities, which included nursing homes throughout Broome and neighboring counties, and Binghamton General Hospital.

In order to provide more suitable living arrangements for the displaced residents, DOH approved Vestal Park to operate two temporary nursing units: a 60 bed unit in Willow Point Nursing Home, the County nursing home, and a 50 bed unit in the Greater Binghamton Health Center, an Office of Mental Health psychiatric hospital. Residents were able to move into Willow Point immediately since the nursing home had code conforming space made available through an earlier rightsizing initiative. The Binghamton Health Center beds however were not occupied until May, 2012, following renovations required to convert the empty inpatient wings into a functioning skilled nursing facility.

Additional bed resources became available in February, 2012 through the reopening of a 25 bed unit at Bridgewater Center for Rehabilitation and Nursing Care, a nursing home located in Binghamton owned by two of the principals of Vestal Park. Bridgewater had been approved through a 2006 rightsizing initiative to temporarily decertify 25 SNF beds. In November, 2011 Bridgewater received approval to re-certify the 25 bed nursing unit in the interim until the replacement Vestal Park facility opens.

Bridgewater had also received approval in February, 2010 to operate a 31 slot adult day health care program. The project did not proceed, and the applicant has elected to instead include an adult day health care program in the new Vestal Park complex.

#### Physical Environment

The new two story nursing facility will be constructed on a 19 acre parcel and consist of approximately 119,257 gross square feet. The skilled nursing facility will consist of two 40 bed nursing units on two levels, organized into 20 bed neighborhoods, creating a butterfly-shaped design. Entry into the nursing home will be made from the southwest end of the facility, with the adult care facility situated on the opposite end. Administrative offices will flank the entry corridor and reception area, with a screened porch and family dining and conference room on the opposite side. The entryway

merges into the main corridor which bisects the entire building, connecting with the adult day health care program and the adult care facility. The adult care facility will have its own separate reception and waiting area, with the entrance located immediately adjacent to the separate outside entrance for the adult day health care program.

The twenty bed neighborhoods attach to the central core of the nursing home, with each 40 bed nursing unit containing a 40 or 44 seat dining room with country kitchen, a whirlpool bath and stretcher shower combination, and a nursing work area and medication room. The neighborhoods offer a selection of living arrangements including singles, enhanced doubles and traditional head to head double bedrooms with multiple windows. The bedrooms are arrayed around the living/activity "parlor" with a kitchen/nutrition station. A "wanderway" provides a circulation pattern, with natural light streaming into the neighborhood through large windows in the back lounge area.

The nursing home will include two specialty nursing units on the first floor, a short term rehabilitation unit and a "memory care"/ dementia unit, with features that differentiate them from the conventional nursing units on the second floor. The design of the short term rehab unit incorporates 3' by 5' roll-in showers in all resident rooms, and adds an enclosed porch on the end of each neighborhood. The design of the memory care unit installs access control doors to deter elopements, and adds an enclosed courtyard between the two neighborhoods to provide safe outside space.

A rehab suite with ADL training room is located across from the adult day health care program area, and the barber/beauty salon is in the wing between the ACF and SNF. The wing also contains staff lockers and dining, and industrial and service functions. A children's playroom adjacent to the rehab suite will offer the opportunity for inter-generational interaction, and an interfaith chapel will be located on the second floor.

The adult day health care program area has been designed to fully conform with 10NYCRR 714.4 and offers ample activities space. The dining/activities room has been designed to be sectioned off in order to allow multiple programs to run concurrently.

Recommendation

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

## Financial Analysis

### Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for 1501 Rt. 26, Vestal, New York, the terms of which are summarized below:

*Date:* June 5, 2012  
*Premises:* 1501 Rt. 26, Vestal, New York, parcel number 189.12-1-13.11  
*Seller:* Rambo Realty, LLC  
*Buyer:* Upstate SK, LLC  
*Purchase Price:* \$900,000, \$50,000 upon execution of this contract with the remaining \$850,000 upon closing and mortgage commitment.

The agreement states that the contract must be closed, payments made and the deed delivered by May 31, 2013, with a three month extension to August 31, 2013, as long as reasonable progress is being made on HUD approval.

### Operations Transfer Agreement

The applicant has submitted an executed operations transfer agreement, the terms of which are summarized below:

*Date:* June 10, 2011  
*Transferor:* VJNH, Inc.  
*Transferee:* Vestal Park Rehabilitation and Nursing Center, LLC  
*Purchase Price:* \$10 upon execution of the Bill of Sale.  
*Assets Transferred:* All of transferor's title, interests and rights in connection with the operation.

*Liabilities*

*Transferred:* All liabilities associated with transferred assets.

The applicant has provided an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid overpayment liabilities.

**Lease Rental Agreement**

The applicant has submitted a proposed lease rental agreement for 1501 Rt. 26, Vestal, New York, the terms of which are summarized below:

*Premises:* Vestal Park Rehabilitation and Nursing Center, a 160-bed RHCF  
*Landlord:* Sheedy Road, LLC  
*Lessee:* VRNC, LLC  
*Rental:* Amount to cover the sum of the landlord's debt service under any mortgage and expenses relating to that mortgage. Approximately \$1,913,546 per year.  
*Term:* 30 year term.  
*Provisions:* Lessee is responsible for taxes, utilities and maintenance.

The lease arrangement is a non-arm's length agreement. The applicant has stated that there are no comparable properties in their geographical location to measure reasonableness of the rent. The rent is based on a pass-through of the debt service, without any mark-up.

**Total Project Costs and Financing**

Total cost to construct the proposed 160-bed RHCF and the 31 slot ADHCP is estimated at \$37,684,714 itemized below:

Land Acquisition	\$810,000
New Construction	23,777,630
Site Development	1,610,244
Temporary Utilities	133,650
Design Contingency	2,538,788
Construction Contingency	1,269,394
Fixed Equipment	646,923
Planning Consultant Fees	208,000
Architect/Engineering Fees	1,443,394
Other Fees (Consultant)	198,224
Movable Equipment	1,857,975
Telecommunications	286,000
Financing Costs	1,652,530
Interim Interest Expense	1,042,847
CON Application Fee	3,000
Additional Processing Fee	<u>206,116</u>
Total Project Cost	\$37,684,714

Project cost is based on a July 1, 2013 construction start date and a sixteen month construction period. Project cost for the RHCF, excluding CON fees, is \$36,431,695 for new construction.

The Bureau of Architectural and Engineering Facility Planning (BAEFP) has determined that the cost per bed of \$227,698 for new construction is within applicable geographic project cost per bed limitations.

The applicant's financing plan is as follows:

Cash	\$ 265,477
HEAL NY Phase 21 Grant	7,373,237
HUD Mortgage (4.90% over 30 years), FHA Approved	30,046,000

The Department is reducing the recommended equity contribution to 20% in exchange for the 20 RHCF beds to be decertified and project costs below the applicable RHCF bed caps. The facility is in need of physical replacement of beds, which has been verified by the Bureau of Architecture and Engineering Facility Planning. Total Project costs for the RHCF and the ADHCP is \$36,635,069 and \$1,049,645, respectively.

Department staff has placed a contingency for an MAI appraisal in support of the land value.

Business Plan

The applicant has provided the following business plan to implement the establishment and construction of Vestal Park Rehabilitation & Nursing Center, a 160-bed RHCF in Broome County.

- Decertification of 20 RHCF beds to help accommodate the Commission on Health Care Facilities in the 21<sup>st</sup> Century recommendation in Broome County.
- To place the original Vestal residents back into their own community.
- Programmatically to design the RHCF with new programs to better suit patient needs such as : a post-acute and rehabilitation program, a respiratory care program, a hospice and comfort care program through affiliation with a local Hospice provider, and accommodation of difficult to place patients.
- Implementation of a community outreach program to home health agencies, assisted living facilities, adult care facilities and community groups.

Operating Budget

Following is a summary of the submitted operating budget for the RHCF, presented in 2013 dollars, for the first year:

RHCF

	<u>First Year Total</u>	<u>Third Year Total</u>
Revenues:		
Medicaid	\$6,598,254	\$6,706,495
Medicare	1,860,439	1,899,564
Private Pay/Other	3,333,943	3,404,181
Assessment Revenues	<u>591,257</u>	<u>601,961</u>
Total Revenues	\$12,383,894	\$12,612,201
Expenses:		
Operating	\$9,825,787	\$9,944,836
Capital	<u>2,347,284</u>	<u>2,347,284</u>
Total Expenses	\$12,173,071	\$12,292,120
Net Income (Loss)	\$ 210,823	\$320,081
Utilization:(patient days)	55,480	56,648
Occupancy	95.0%	97.0%



The following is noted with respect to the submitted RHCF operating budget:

- Medicare and private pay revenues are based on current payment rates.
- The facility's projected Medicaid rate is based on 2012 Medicaid Statewide Pricing with adjusted capital for new facility.
- Payor utilization was based on 2010 RHCF-4 percentages since this was the last full year the RHCF was functional before Hurricane Irene.
- Overall utilization for year one and three are projected at 95.0% and 97.0%, respectively, while utilization by payor source is expected as follows:

	<u>Years One and Three</u>
Medicare	8.4%
Medicaid	68.5%
Private Pay	23.1%

### ADHCP

	<u>Year One</u>	<u>Year Three</u>
Revenue	\$543,615	\$550,775
Expenses	<u>543,583</u>	<u>550,723</u>
Net Income	\$32	\$52
Visits	7,254	7,456

Utilization by payor source for the ADHCP will be 100% Medicaid for the first year and third years subsequent to the change in operator.

The combined projected revenues and expenses for Vestal Park Rehabilitation and Nursing Center for the first and third years subsequent to the change in operator are as follows:

	<u>First Year</u>	<u>Third Year</u>
Revenues	\$12,927,509	\$13,162,976
Expenses	<u>12,716,686</u>	<u>12,842,895</u>
Net Income	<u>\$210,823</u>	<u>\$320,081</u>

### Capability and Feasibility

The applicant will satisfy the project costs from proposed member's equity of \$265,477 and a HEAL NY Phase 21 Grant for \$7,373,237, and the remainder will be a mortgage of \$30,046,000 over 30 years @ 4.9%. A bank letter of interest from Century Health Capital, Inc. has been submitted by the applicant at stated terms. BFA Attachment A shows sufficient equity for the proposed members.

Working capital requirements are estimated at \$2,119,448 based on two months of the first year expenses, and will be provided by a loan of \$1,024,343 @4.9% over five years, and the remaining \$1,095,105 through the equity of proposed members. Presented as BFA Attachment A, is the net worth statements of the proposed members of VRNC, LLC. A bank letter of interest from Century Health Capital, Inc. has been submitted by the applicant at stated terms.

The submitted budget indicates that a net profit of \$210,823 and \$320,081 would be maintained in the first and third year, respectively, following new construction. 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.

BFA Attachment C presents the pro-forma balance sheet of the new facility. As shown, the facility will initiate operation with \$7,490,298 in equity.

Presented as BFA Attachment B is the financial summary for Vestal Park Rehabilitation & Nursing Center, which has experienced negative working capital and negative net equity for the period shown with the exception of positive working capital for 6/19/2011 through 12/31/2011, and maintained a positive net income until 2011 when VRNC, LLC was appointed receiver.

Shortly after this appointment, the facility became uninhabitable due to a flood caused by Hurricane Irene. Patients were placed in 60 beds at Willow Point Nursing Home, a 303-bed public county RHCf located in Vestal in 2011, and another 50 beds from Greater Binghamton Health Center have become operational in the second half of 2012.

Presented as BFA Attachment D is the financial summary for Bridgewater Center for Rehabilitation & Nursing, which maintained positive working capital and net equity for the period shown.

The facility only shows an operating loss in 2009 due to carryover for pharmacy expenses from the prior owner. It must be noted that in 2011, Bridgewater Center for Rehabilitation & Nursing reactivated 25 RHCf beds to accommodate patients from Vestal Park Rehabilitation & Nursing Center.

Presented as BFA Attachment E, is the financial summary for Central Park Rehabilitation & Nursing Center which maintained positive working capital for the period shown and experienced positive net equity by 2011. The facility only shows an operating loss in 2009 due to prior year reduction of Medicaid payments and at this time was still under receivership.

Presented as BFA Attachment F is the financial summary for Pine Valley Center for Rehabilitation and Nursing, which maintained positive equity for the period shown. In 2009 and 2010, the facility had positive net income, but in 2011, shows a net loss of \$874,208 due to the facility advancing payment on a capital project, which will be reimbursed through a HEAL NY Phase 12 grant in the amount of \$981,482. The negative working capital for 2009 and 2010 is due to a change in accounting methods in accruing Medicare Part B expenses and employee accrued payroll and withholding tax.

Therefore, 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 Statements of Proposed Members
BFA Attachment B	Financial Summary of Vestal Park Rehabilitation & Nursing Center
BFA Attachment C	Pro Forma Balance Sheet for Vestal Park Rehabilitation & Nursing Center
BFA Attachment D	Financial Summary of Bridgewater Rehabilitation & Nursing Center
BFA Attachment E	Financial Summary of Central Park Rehabilitation & Nursing Center
BFA Attachment F	Financial Summary of Pine Valley Rehabilitation & Nursing Center

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of December, 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 Vestal Park Rehabilitation and Nursing Center, LLC as the operator of Vestal Nursing Center, construct a 160 bed replacement facility to be located at 1501 Route 26 South, Vestal, and add an Adult Day Health Care Program with a capacity of 31, 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:

122147 B

FACILITY/APPLICANT:

VRNC, LLC d/b/a Vestal Park Rehabilitation  
and Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of 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 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]
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 implement of the plan. The plan should include but not be limited to:
    - o Information on activities relating to a-c above; and
    - o Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - o 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. Decertification of the temporarily certified beds that were implemented to house Vestal Park Rehabilitation and Nursing Center patients. Decertification must be completed prior to the facility transitioning residents back to the new facility. [RNR]
5. Submission of and programmatic review and approval of the final floor plans. [LTC]
6. Submission of a commitment acceptable to the Department, for a permanent mortgage from a recognized lending institution at a prevailing rate of interest within 120 days of receipt from the Office of Health Systems Management, Bureau of Architectural and Engineering Facility Planning, of approval of final plans and specifications and before the start of construction. Included in the submitted permanent mortgage commitment must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
7. Submission of an executed working capital loan agreement that is acceptable to the Department. [BFA]
8. Submission of a land appraisal by a member of the Members Appraisal Institute that is acceptable to the Department. [BFA]

9. Submission of an executed Bill of Sale 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 the applicant's executed Certificate of Amendment of its Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
13. Submission of evidence of site control, acceptable to the Department. [BFA, CSL]

APPROVAL CONDITIONAL UPON:

1. Bridgewater Center for Rehabilitation and Nursing, LLC will decertify 25 residential health care facility beds, reducing its capacity from 356 residential health care facility beds to 331 residential health care facility beds upon completion of the construction of Vestal Park Rehabilitation and Nursing Center's 160-bed residential health care facility and the adjoining 40-bed assisted living program. [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]
3. The applicant shall complete construction by October 31, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

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

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

**December 6, 2012**

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**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

Adoption of CON Redesign Recommendations – **Distributed  
under separate cover**

**Exhibit #25**

**TO BE DISTRIBUTED UNDER SEPARATE COVER**