

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

**AGENDA**

*August 1, 2013*

*Immediately following the Special Establishment and Project Review Committee Meeting  
(scheduled to begin at 11:00 a.m.)*

*The National Museum of Play at The Strong  
One Manhattan Square  
Activity Room C and D  
Rochester, New York 14607*

**I. INTRODUCTION OF OBSERVERS**

Jeffrey Kraut, Vice Chairman

**II. APPROVAL OF MINUTES**

June 6, 2013

**Exhibit #1**

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

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

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

**B. Report of the Executive Deputy Commissioner**

NYS e-FINDS

Evacuation of Facilities in Disasters Patient Tracking System

Sue Kelly, Executive Deputy Commissioner

**C. Report of the Office of Health Systems Management and Office of Primary Care Activities**

Karen Westervelt, Deputy Commissioner, Office of Health Systems Management and  
Office of Primary Care

**IV. PUBLIC HEALTH SERVICES**

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

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

**V. HEALTH POLICY**

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

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

**VI. REGULATION**

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

**Exhibit #2**

Angel Gutiérrez, M.D., Chair

**For Emergency Adoption**

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR - Children’s Camps

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

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

Jeffrey Kraut, Chair of Establishment and Project Review Committee

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

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

**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.	131217 C	Saratoga Hospital (Saratoga County)	Contingent Approval

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

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

**CON Applications**

**Acute Care Services – Construction**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	131207 C	Long Island Jewish Medical Center (Queens County) Mr. Kraut – Recusal Dr. Sullivan – Abstain/Interest	Contingent Approval

**Hospice Services – Construction**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	131211 C	High Peaks Hospice and Palliative Care, Inc. (Franklin County) Mr. Booth – Interest Dr. Rugge - Interest	Approval
2.	131252 C	The Community Hospice Inc. (Rensselaer County) Dr. Rugge - Interest	Approval

**Upstate Request for Applications – Certified Home Health Agencies –  
Construction**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121239 C	Visiting Nurse Service of Rochester and Monroe County (Monroe County) Mr. Booth – Recusal Ms. Hines – Recusal Mr. Robinson - Recusal	Approval

- |    |          |  |          |
|----|----------|--|----------|
| 2. | 121245 C | Lourdes at Home<br>(Broome County)<br>Mr. Booth - Interest | Approval |
|----|----------|--|----------|

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

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

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #7  
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121327 C Hebrew Hospital Home LTHHCP (Bronx County) Ms. Hines – Abstained at EPRC	Approval

**Downstate Dear Administrator Letters – Long Term Home Health Care Program – Construction Exhibit #8**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121457 C Split Rock Rehabilitation and Health Care Center (Bronx County) Ms. Hines – Abstained at EPRC	Approval

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

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #9**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111439 B	Bronx SC, LLC (Westchester County)	Contingent Approval
2.	122265 B	Island Ambulatory Surgery Center, LLC (Kings County)	Contingent Approval
3.	122270 B	Manhattan ASC, LLC (New York County)	Contingent Approval
4.	131151 E	Hudson Valley Ambulatory Surgery, LLC (Orange County)	Contingent Approval
5.	131243 E	Yorkville Endoscopy Center (New York County)	Contingent Approval

**Residential Health Care Facility – 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.	122219 E	Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing (Queens County)	Contingent Approval
2.	131020 E	Providence Care, Inc. d/b/a Providence Care Nursing and Rehabilitation Center (Kings County)	Contingent Approval

- |    |          |   |                     |
|----|----------|---|---------------------|
| 3. | 131153 E | Oasis Rehabilitation and<br>Nursing LLC<br>(Suffolk County) | Contingent Approval |
|----|----------|---|---------------------|

**Certificate of Incorporation**

**Exhibit #11**

**Applicant**

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

- |    |   |          |
|----|---|----------|
| 1. | Valentin Fuster – Mount Sinai Foundation for Science,<br>Health and Empowerment, Inc. | Approval |
|----|---|----------|

**Certificate of Amendment of the Certificate of Incorporation**

**Exhibit #12**

**Applicant**

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

- |    |  |          |
|----|--|----------|
| 1. | Planned Parenthood of South Central New York, Inc. | Approval |
| 2. | SS Joachim & Anne Residence                        | Approval |

**Certificate of Dissolution**

**Exhibit #13**

**Applicant**

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

- |    |                               |          |
|----|-------------------------------|----------|
| 1. | St. Camillus Foundation, Inc. | Approval |
|----|-------------------------------|----------|

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #14**

**Number**

**Applicant/Facility**

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

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|--------|--|---------------------|
| 2056-L | 3 Angels Care, Inc.<br>(Queens and Nassau Counties)  | Contingent Approval |
| 1929-L | Allstar Homecare Agency, Inc.<br>New York, Bronx, Kings,<br>Richmond, Queens, and<br>Westchester Counties) | Contingent Approval |
| 1967-L | DBN Partners, Inc. d/b/a Always<br>Best Care of Lower Hudson<br>Valley<br>(Orange and Rockland Counties)   | Contingent Approval |
| 2057-L | Entire Care, Inc.<br>(Kings, Westchester, Queens,<br>Bronx, New York, and Richmond<br>Counties)            | Contingent Approval |

2170-L	F.A.B., LLC d/b/a F.A.B. Home Care Services (Kings, Richmond, Queens, Bronx, and New York Counties)	Contingent Approval
1801-L	Hand in Hand Home Care, LLC (Bronx, New York, Queens, Richmond, and Kings Counties)	Contingent Approval
2101-L	HomeCare Solutions, Inc. (Nassau, Suffolk, and Queens Counties)	Contingent Approval
2005-L	Li Bo Lui d/b/a Union Health Care (Bronx, Kings, new York, Queens, and Nassau Counties)	Contingent Approval
2049-L	Maxcare, LLC (Bronx, Kings, New York, Queens, and Richmond Counties)	Contingent Approval
2085-L	New Vision Home Care Services, LLC (Westchester County)	Contingent Approval
2064-L	All American Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2181-L	Medford Hamlet LLC d/b/a Medford Hamlet Home Care (Nassau, Suffolk and Queens 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**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #15**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	131026 B	Central New York ASC, LLC d/b/a OMNI Outpatient Surgery Center (Oneida County) Mr. Booth - Interest	Contingent Approval
2.	131085 E	Heritage One Day Surgery (Onondaga County) Mr. Booth - Interest	Contingent Approval

**Certified Home Health Agencies – Establish/Construct**

**Exhibit #16**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122304 E	First To Care Home Care Inc (Kings County) Mr. Fassler - Interest	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #17**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
	2047-L	AIM Services, Inc. (Albany, Warren, Schenectady, Washington, Rensselaer, Fulton, Saratoga and Montgomery Counties) Dr. Rugge - Recusal	Contingent Approval
	2253-L	Home Aides of Central New York, Inc. (Onondaga, Cortland, Oswego, Oneida, Madison and Cayuga Counties) Mr. Booth - Interest	Contingent Approval



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

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

**Upstate Request for Applications - Certified Home Health Agencies – Exhibit #18**  
**Establish/Construct**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1. 121273 E	Elant Choice, Inc. (Orange County) Ms. Hines – Abstained at EPRC	Approval

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

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

**NO APPLICATIONS**

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

**Ambulatory Surgery Centers – 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. 121373 B	Lockport Ambulatory Surgery, LLC (Niagara County) Mr. Booth - Interest Dr. Grant – Abstained at EPRC	Disapproval

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

**HOME HEALTH AGENCY LICENSURES** Exhibit #20

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
2054-L	Renaissance Health Services, Inc. d/b/a Lagora Health Service (Kings, Nassau, Queens, Bronx, New York, and Richmond Counties)	To be presented at the Special Establishment/Project Review Committee on 8/1/13 No Recommendation

2083-L

Parkshore Home Health Care,  
LLC d/b/a Renaissance Home  
Health Care  
(Kings, Bronx, Queens,  
Richmond, New York and Nassau  
Counties)  
Mr. Fassler - Interest

To be presented at the Special  
Establishment/Project Review  
Committee on 8/1/13  
No Recommendation

**VIII. NEXT MEETING**

September 12, 2013 – NYC  
October 3, 2013 – NYC

**IX. ADJOURNMENT**

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

**Minutes**  
**June 6, 2013**

The meeting of the Public Health and Health Planning Council was held on Thursday, June 6, 2013 at the New York State Department of Health, 90 Church Street, Rooms 4A and 4B, New York, New York. Chairman, Dr. William Streck presided.

**COUNCIL MEMBERS PRESENT:**

Dr. William Streck, Chair	Ms. Ellen Rautenberg
Dr. Howard Berliner	Ms. Susan Regan
Dr. Jodumatt Bhat	Mr. Peter Robinson
Mr. Christopher Booth	Dr. John Ruge
Dr. Jo Ivey Boufford	Dr. Theodore Strange
Dr. Angel Gutiérrez	Dr. Ann Marie Sullivan
Ms. Victoria Hines	Dr. Anderson Torres
Dr. Glenn Martin	Dr. Patsy Yang
Dr. John Palmer	Commissioner Shah (ex-officio) Albany

**DEPARTMENT OF HEALTH STAFF PRESENT:**

Mr. Charles Abel	Ms. Sylvia Pirani – Albany (via video)
Dr. Guthrie Birkhead	Ms. Linda Rush – Albany (via video)
Mr. James Clancy – Albany (via video)	Mr. Robert Schmidt – Albany (via video)
Ms. Barbara DelCogliano – Albany (via video)	Mr. Timothy Shay – Albany (via video)
Mr. Christopher Delker – Albany (via video)	Ms. Lisa Thomson
Ms. Colleen Frost	Ms. Westervelt – Albany (via video)
Ms. Rebecca Fuller Gray	
Ms. Sandy Haff - Albany (via video)	
Ms. Lisa McMurdo – Albany (via video)	

**INTRODUCTION:**

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

**MEETING OVERVIEW:**

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

**APPROVAL OF THE MINUTES OF APRIL 11, 2013:**

Dr. Streck asked for a motion to approve the April 11, 2013 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval which was seconded by Dr. Gutiérrez. The minutes were unanimously adopted. Please refer to page 3 of the attached transcript.

## **REGULATION**

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

### **For Emergency Adoption**

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR - Children's Camps

Dr. Gutiérrez began his report by introducing 13-08 Amendment of Subpart 7-2 of Title 10 NYCRR - Children's Camps for Emergency Adoption. Mr. Shay briefly described the regulation. The regulation was passed with one member abstaining. Please see pages 4 through 6 and 47 through 50 for the discussion surrounding the regulation and page 50 for the passing of the emergency regulation.

### **For Discussion**

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR – Children's Camps

Repeal of Sections 708.2 and 708.5 and addition of a new Section 405.33  
Trauma Centers

Repeal of Subdivision (g) in Section 405.19 and addition of a new  
Section 405.32 of Title 10 NYCRR – Observation Services

Repeal of Sections 405.43 and 700.5 and Amendment of Section 400.21 of  
Title 10 NYCRR Advance Directives

13-12 Amendment of Section 1.31 of Title 10 NYCRR - Disclosure of  
Confidential Cancer Information

Dr. Gutiérrez briefly described regulations that are on the agenda for discussion. The first being 13-08 Amendment of Subpart 7-2 of Title 10 NYCRR – Children's Camps and noted that it is the permanent version of the regulation.

Dr. Gutiérrez then introduced Repeal of Sections 708.2 and 708.5 and addition of a new Section 405.33 Trauma Centers, Repeal of Subdivision (g) in Section 405.19 and addition of a new Section 405.32 of Title 10 NYCRR – Observation Services, Repeal of Sections 405.43 and 700.5 and Amendment of Section 400.21 of Title 10 NYCRR Advance Directives, and 13-12 Amendment of Section 1.31 of Title 10 NYCRR - Disclosure of Confidential Cancer Information. Please refer to pages 7 through 11 of the transcript to review the brief description of the regulations.

Dr. Gutiérrez concluded his report. Dr. Streck thanked Dr. Gutiérrez for the report.

## **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES:**

Dr. Streck introduced Ms. Misa to give the Report on the Activities of the Office Health Insurance Programs.

## **REPORT OF OFFICE OF HEALTH INSURANCE PROGRAM ACTIVITIES:**

Ms. Misa began her report by giving the members an update on the priorities for 2012-13. Ms. Misa stated that one project is the continuation of Medicaid redesign, the continuation of discussions with CMS on the MRT super waiver and also the launching stage for the FIDA demo. The Department is preparing to launch various reforms with the ACA as well as continue the State takeover of Medicaid administration.

Ms. Misa described the MRT action plan was a plan that would take a full five years to implement. Currently we are in year two of five, and the Department continues the transition of care management for all, specific fee-for-service populations moving into mainstream Medicaid. Three of the main populations that we will be moving into Medicaid in 2013 include community placed foster care children and the Lombardi program. Both of these received CMS approval in April, and the transition for foster care children is expected will become effective July 1, 2013, approximately 6000 children statewide with the transition of the Lombardi program which also received CMS approval. The Medicaid only individuals received their mandatory letters in mid-May and the Department expects individuals will begin enrolling into mainstream Medicaid beginning August 1, 2013. The duals that are in the Lombardi program, that transition timeline will mirror on the timeline for managed long term care. The next big population that the Department is looking to transition in 2013 are the non-dual nursing home populations so this is approximately 6000 people statewide. Currently there is a workgroup comprised of Department staff and stakeholders throughout the community to attempt to work through the issues with this transition.

Ms. Misa stated the MRT created 237 distinct projects in phase one, phase two, as well as phase three. The Department is currently implementing phase one, two, and three as a large portion of those projects have been completed. The implementation of transportation management, in 2013 to begin to phase in to 24 counties in the Finger Lakes and in Northern New York, and issue procurement this summer for seven counties in the Western region including Buffalo. The Department also continues to roll out health homes. As of June 2013 we have over 38,000 individuals enrolled in health homes, and by April 2014 to have approximately 150,000 individuals enrolled in health homes.

Ms. Misa noted that another major initiative is to continue funding for supportive housing efforts. This is Medicaid state only dollars for capital rental subsidies and service supports for high need Medicaid members. In 2012-13 the Department invested \$75 million for this initiative. The Department expects that that investment will assist a little nearly 5000 individuals. So we're real excited with that particular MRT initiative.

Ms. Misa explained the next initiative is to continue to drill down on the Medicaid benefit package and plan to implement the vital access provider program.

Ms. Misa announced the next major initiative is the MRT super waiver. The request submitted to the federal government asked for the reinvestment of \$10 billion over five years. The super waiver investment includes various investments in primary care, health home development, new care models, (VAP) and supportive housing investments, hospital transitions, some public health innovations.

Next, Ms. Misa described the financial issues with the DD problem. The Department is working with CMS to resolve the issues. This was an additional cost totaling \$1.1 billion, most of which has been absorbed within the Medicaid cap, primarily because the MRT had been proven more successful than originally anticipated.

Ms. Misa noted priority five is ACA implementation is as well as the State takeover of Medicaid administration. It has been a very challenging project because no one has ever built on this type of IT infrastructure before.

Ms. Misa concluded her report and Dr. Streck asked for questions or comments from the members. To view Ms. Misa's complete report and comments from the members, please refer to page 11 through 16 of the attached transcript.

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

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

Mr. Smith addressed two major areas. The first, meaningful use and the second a Department initiative working with the Centers of Medicaid and Medicare's innovation program which is a grant award that the Department received.

Mr. Smith indicated that meaningful use, to date, nationally \$41.5 billion have been distributed to eligible providers and eligible hospitals. Under the Medicaid program, payments have been made to 196 hospitals and just fewer than 7000 eligible providers totaling \$378 million. On the Medicare side as of April 133 hospitals have been paid and just over 13,000 eligible providers have received payments totaling \$476,000. A total of 329 hospitals have been paid.

Mr. Smith described The State Innovation Model which is about providing funding to states for multipayer payment in healthcare delivery system. The aim is to improve the healthcare delivery system for states that are participating while containing and decreasing costs associated with the programs. They are looking at Medicare/Medicaid and CHPs, and also require the involvement of commercial payers across the State. The straw man has three components. The first is an enhanced primary care delivery model which uses the PCMH, person centered, patient-centered medical home as the core infrastructure for the model. It then incorporates integrating behavioral healthcare into primary care, a big area of big expense area. A big area for quality improvement integrating behavioral health into primary care, and it also looks at the activities associated with the transition of care from hospital to home, from hospital to nursing home, nursing home to hospital. It is believed that this enhanced primary care model

will be very consistent with the New York State's prevention agenda specifically focusing on hypertension, diabetes and obesity, incorporating those into the initiatives. The second part of the model include payment model change. The CMS, CMMI center has basically as part of the grant instructed states that they need to come up with a plan that will drive towards moving 80 percent of the State's population to a value-based care delivery model within the next five years. The third part of the straw man includes the data analytics and that of support perspective which is needed to be able to support the model redesign, the operation redesign. Mr. Smith explained a very critical component of the project is to involve stakeholders on a statewide basis involving leaders across the State.

Mr. Smith went into further detail regarding the project and concluded his report. To review the complete report, see pages 16 through 26 of the attached transcript.

Dr. Streck thanked Mr. Smith for his report and moved to the Report of the Committee on Public Health activities.

## **PUBLIC HEALTH SERVICES**

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

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

Dr. Boufford advised the members on the most recent meeting of the Ad Hoc Leadership Group held on May 22, 2013 and updates of work has been done on the prevention agenda since the last meeting. There are five contracts that were let with the support of the Robert Wood Johnson Foundation funding to the prevention agenda. It was decided to go with funding a fewer number of regional technical assistance organization. The Healthcare Association of New York State is doing a statewide special focus with special focus on the Hudson Valley, LIJ-North Shore collaboration with their Nassau County Observatory is working with Nassau and Suffolk Counties in a similar role although not funded by this program, and New York City has not been included in this area because there is a continuing discussion about the alignment of the technical assistance activities of the statewide initiative with New York City.

Dr Boufford noted that the Commissioner's guidance to hospitals and local health departments to prepare their community health plans and their community health needs assessments, do those together and compare their community health plans and benefit plans together. There was a survey of these coalitions recently to find out where they are and what they are doing. There was a very good response rate 49 of the 57 counties responded, noting that New York City is not in that grouping.

Dr Boufford outlined the priorities that are emerging. The prevention of chronic disease which is one of the five, mental health and substance abuse goal is being embraced by a number of communities, and this work is being done in conjunction with mental health boards that are preparing their reports. One of the charges is to identify – each community is asked to identify two of the objectives within the prevention agenda and to tackle health disparities, and so far, they are reporting work in the health disparities area, and then the early response on what are the challenges are the issue of really setting priorities and really developing the plans and testing the

interventions and evaluating them, and a lot of the technical assistance efforts with these groups.

Dr. Boufford spoke of Statewide technical support, and acknowledged that the HANYS group has stepped up to be incredibly helpful. They have conducted webinars with their own hospital members and they are also providing a strong statewide series of webinars as well as helping to support an interactive website that will allow people to share information and to learn from what's going on across the State.

Dr. Boufford discussed another activity has been the development of a communications plan which is also funded by the Robert Wood Johnson Foundation in conjunction with the Rabin Martin firm that has been working with the Health Department for a little over a year.

Dr. Boufford went into described in detail the actions that took place at the May 22, 2013 meeting of the Ad Hoc Leadership Group and the Joint Meeting of the Committee on Public Health.

Dr. Streck thanked Dr. Boufford for her report. Please see pages 26 through 39 of the attached transcript.

## **I. HEALTH POLICY**

Dr. Streck next moved to the Category of Health Policy and introduced Dr. Ruge.

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

Dr. Ruge described the charge of the Committee on Health Planning is to consider how to use all the tools of public policy including but not necessarily limited to CON, for ambulatory care services across the State. The Committee will consider how to create a broader spectrum of institutional categories, functioning organizations that respond and perform well in a new environment.

Dr. Ruge advised that the Committee met in May to understand the perspectives and challenges and the experience of the key provider stakeholders. There were candid discussions of representing physicians, new large physician groups, the high performing groups in a second panel. Hospital representatives from HANYS, Greater New York, and the Suburban Group, clinic presentations by PCDC, CHCANYS, and Family Planning Advocates. There was also no opposition to bringing to the floor and recognizing services now in play and do exist.

Dr. Ruge described the upcoming Health Planning meetings and the agenda items to be discussed. The Committee will make recommendations to the Council, the Department and the Governor later in the fall.

Dr. Ruge concluded his report, to review in detail and the members comments, please refer to pages 40 through 47 of the transcript.



## **REPORT OF DEPARTMENT OF HEALTH ACTIVITIES:**

Dr. Streck thanked Dr. Rugge and introduced Ms. Westervelt to give the Report of the Activities of the Office of Health Systems Management.

## **REPORT OF THE OFFICE OF HEALTH SYSTEMS MANAGEMENT ACTIVITIES**

Ms. Westervelt began her report by stating the Department sent out a Dear Administrator letter as it relates to a new initiative that we have as we go into the next hurricane season, initiative called (efind) it is a patient tracking system that the Department has put in place for residential healthcare facilities which would impact adult care facilities, nursing homes, and hospitals, and basically what the system is. It is a system where a bracelet with a bar code for the patient with scanning equipment that the healthcare facility would use on both the receiving and sending end that would provide the information that we need to be able to track patient during an emergency.

Ms. Westervelt noted that the Department is engaging in the review for the SUNY Downstate sustainability plan. The time frame is very short, SUNY had submitted a sustainability plan to the Department and to the Division of Budget. The Department is in the course analyzing the plan.

Ms. Westervelt stated that the Department has had a large number of healthcare providers that are asking about the status of the provider grant dollars are in New York State and would say that conversations are still ongoing with CMS. The Department is actively pursuing approval because those operational dollars are certainly going to be much needed for healthcare providers as they are going through a period of change and restructure.

Ms. Westervelt concluded the OHSM Report. Please see pages 52 through 54 of the attached transcript for a more detailed report.

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

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

Dr. Birkhead gave a brief report on the public health accreditation process. Currently two state health departments and 12 local health departments have been accredited. I would note that Livingston County in New York is the sole county health department in New York that's been accredited. Joan Ellison was the retired now director of that health department, was on the public health council for many years. Ms. Ellison was able to pull her department through to become accredited with the national body, which is quite an accomplishment for her.

The Department has submitted the initial paperwork which includes Prevention Agenda, strategic plan, and other documents. Sylvia Pirani is our lead on this and has attended a training now, there is a one year clock ticking to put documents up on the accreditation website that demonstrate our proficiency in 12 different areas; 10 of them being the 10 essential public health services and two additional areas related to administration. The Department has formed 12 different workgroups to develop the documentation.

Dr. Birkhead concluded his report. To see Dr. Birkhead’s report, please see pages 54 through 58 of the attached transcript.

**PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS**

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

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

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

**CON Applications**

**Acute Care Services – Construction**

**Exhibit #3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	122216 C	University Hospital (Suffolk County)	Contingent Approval
2.	122303 C	Northern Dutchess Hospital (Dutchess County)	Contingent Approval
3.	131101 C	Montefiore Med Center – Jack D Weiler Hosp of A Einstein College Div (Bronx County)	Contingent Approval

Mr. Booth introduced application 122216, 122303, and 131101 and recommended approval which was seconded by Dr. Gutiérrez. The motion carried. Please see page 58 through 60 of the attached transcript.

**Cardiac Services – Construction**

**Exhibit #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>Council Action</u></b>
1.	131114 C	Brookhaven Memorial Hospital Medical Center, Inc. (Suffolk County)	Contingent Approval

Mr. Booth described application 131114 and motion to approve. The motion was seconded by Dr. Gutiérrez and the motion to approve carried. Please see page 60 of the attached transcript.

**Upstate Request for Applications – Certified Home Health Agencies –  
Construction**

**Exhibit #5**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	121238 C	Visiting Nurse Service of Schenectady and Saratoga (Schenectady County) Dr. Ruge – Interest	Approval
2.	121317 C	VNA of Albany VNA of Saratoga VNA of Rensselaer (Albany County)	Approval
3.	121443 C	Hudson Valley Long Term Home Health Care Program (Ulster County)	Approval
4.	131184 C	Calvary Hospital (Bronx County)	Approval

**Downstate Dear Administrator Letters – Long Term Home Health Care  
Program – Construction**

**Exhibit #6**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	121290 C	Park Gardens Rehabilitation & Nursing Center, LLC (Bronx County)	Contingent Approval

Mr. Booth introduced applications 121238, 121317, 121443, 131184, and 121290. Dr. Gutiérrez seconded the motion to approve. The motion carried with a noted interest by Dr. Ruge on application 121238. Please see pages 60 through 62 of the attached transcript.

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

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

**CON Applications**

**Acute Care Services – Construction**

**Exhibit #7**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	121069 C	St Johns Episcopal Hospital So Shore (Queens County) Dr. Bhat - Recusal	Contingent Approval

Mr. Booth called application 121069 and noted that Dr. Bhat is recusing and has left the meeting room. Dr. Gutiérrez seconded the motion. The application was approved with Dr. Bhat's noted recusal. Dr. Bhat returned to the meeting room. See pages 62 and 63 of the attached transcript.

**Upstate Request for Applications – Certified Home Health Agencies – Exhibit #8  
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121139 C	Visiting Nurse Association of Central New York Inc (Onondaga County) Mr. Booth - Interest	Approval

Mr. Booth described application 121139 and noted for the record that he has in interest. Mr. Booth motioned for approval which was seconded by Dr. Gutiérrez. The motion to approve carried with Mr. Booth's noted interest. See pages 63 and 64 of the attached transcript.

**Upstate Request for Applications – Certified Home Health Agencies – Exhibit #8  
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2. 121170 C	Rosa Coplon Jewish Home and Infirmary (Erie County) Mr. Booth – Interest Dr. Gutiérrez - Recusal	Approval

Mr. Booth introduced application 121170 and noted for the record that Dr. Gutierrez was exited the meeting room declaring a conflict. Mr. Booth motioned for approval which was seconded by Mr. Fassler. The motion to approve carried. Dr. Gutiérrez returned to the meeting room. Please see page 64 of the attached transcript.

**Upstate Request for Applications – Certified Home Health Agencies – Exhibit #8  
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
3. 121304 C	Twin Tier Home Health, Inc. (Broome County) Mr. Booth Interest	Approval
4. 121319 C	Schofield Residence (Erie County) Mr. Booth - Interest	Approval

5. 131185 C Bethel Nursing Home Co Inc Approval  
(Westchester County)  
Mr. Fensterman – Recusal (not present)

Mr. Booth briefly described applications 121304, 121319, and 131185 and noted for the record that he had an interest in application 121304 and 121319. He motioned for approval, Dr. Gutiérrez seconded the motion. The applications were approved. Please see pages 64 and 65 of the attached transcript.

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #9  
Construction**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121221 C	Ganzel, NY, Inc. d/b/a, Revival Home Health Care (Kings County) Dr. Bhat – Recusal Mr. Fensterman – Recusal (not present)	Approval

Mr. Booth moved to application 121221 and noted for the record that Dr. Bhat was exiting the meeting room and recusing on application 121221. Mr. Booth motioned to approve, Dr. Gutiérrez seconded. The motion to approve carried with Dr. Bhat’s recusal. Dr. Bhat re-entered the meeting room. Please see page 65 and 66 of the transcript.

**Upstate Dear Administrator Letters – Long Term Home Health Care Program – Construction Exhibit #10**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121437 C	Community Health Center of St. Mary’s Healthcare and Nathan Littauer Hospital (Fulton County) Mr. Booth - Interest	Contingent Approval

Mr. Booth described application 121437 and noted for the record he has an interest. Motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Mr. Booth’s interest. Please see page 67 of the attached transcript.

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

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

**Upstate Request for Applications – Certified Home Health Agencies – Construction** **Exhibit #11**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121322 C	Lutheran Long Term Home Health Care Program (Suffolk County) Ms. Hines – Abstained at EPRC	Approval

Mr. Booth introduced application 121322 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with an abstention from Ms. Hines. See page 67 and 68 of the attached transcript.

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

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

**Acute Care Services – Construction** **Exhibit #12**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 122205 C	Women and Children’s Hospital of Buffalo (Erie County) Mr. Booth - Interest Mr. Robinson – Abstained/Interest	Contingent Approval

Mr. Booth introduced application 122205 and noted for the record that he has an interest. Dr. Gutiérrez seconded the motion. Mr. Robinson noted for the record that he has an interest and is abstaining. The motion to approve carried with the noted interests. Please see pages 68 through 70 of the attached transcript.

**Downstate Dear Administrator Letters – Long Term Home Health Care Program – Construction** **Exhibit #13**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121456 C	Fort Tryon Center for Rehabilitation and Nursing (New York County) Mr. Fensterman – Recusal (not present) Ms. Hines – Abstained at EPRC	Contingent Approval

Mr. Booth described application 121456 and motioned approval. Dr. Gutiérrez seconded the motion. The motion carried with one abstention from Ms. Hines. Please see pages 70 and 71 of the transcript.

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

**NO APPLICATIONS**

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

**NO APPLICATIONS**

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

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

**CON Applications**

**Acute Care Services – Establish/Construct**

**Exhibit #14**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 122271 E	St. Peter’s Health Partners (Albany County) Dr. Ruge - Interest	Contingent Approval

Mr. Booth described application 122271 and noted for the record that Dr. Ruge has an interest. Mr. Booth motioned for approval, Dr. Gutierrez seconded the motion. The motion to approve carried with Dr. Ruge’s interest. See page 71 of the attached transcript.

**Ambulatory Surgery Centers – Establish/Construct****Exhibit #15**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	122207 E	Center for Specialty Care Inc (New York County)	Contingent Approval
2.	131050 B	New York Center for Ambulatory Surgery, LLC (New York County)	Contingent Approval
3.	131056 B	The Endoscopy Center of Queens (Queens County)	Contingent Approval
4.	131064 E	Midtown Surgery Center (New York County)	Contingent Approval

Mr. Booth described applications 122207, 131050, 131056, and 131064 and motioned to approve the applications. Dr. Gutiérrez seconded the motion. The motion to approve was carried. See pages 72 through 74 of the attached transcript.

**Residential Health Care Facilities – Establish/Construct****Exhibit #16**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	131054 E	Cortlandt Operations, LLC d/b/a Cortlandt Healthcare (Westchester County)	Contingent Approval
2.	131068 B	Judson Meadows Residential Health Care Center, Inc. (Schenectady County)	Contingent Approval
3.	131100 E	Cosden, LLC d/b/a Palatine Nursing Home (Montgomery County)	Contingent Approval

Mr. Booth called applications 131054, 131068, 131100 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 74 and 75 of the attached transcript.



**Certified Home Health Agencies – Establish/Construct****Exhibit #17**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 131103 E	Tri-Borough Certified Health Systems of New York, LLC d/b/a Family Care Certified (Kings County)	Approval

Mr. Booth introduced application 131103 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. See page 75 of the attached transcript.

**Upstate Request for Applications – Certified Home Health Agencies – Establish/Construct****Exhibit #18**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121213 E	Fort Hudson Certified Home Health Agency, Inc. (Washington County) Dr. Ruge - Interest	Contingent Approval

Mr. Booth described application 121213 and noted for the record Dr. Ruge’s interest. Mr. Booth motioned for approval which was seconded by Dr. Berliner. The motion carried. Please see page 76 of the attached transcript.

**Certificate of Amendment of the Certificate of Incorporation****Exhibit #19**

<u>Applicant</u>	<u>Council Action</u>
North Country Children’s Clinic, Inc.	Approval

Mr. Booth described the proposed Certificate of Amendment of the Certificate of the North Country Children’s Clinic, Inc. and motioned for consent to file. Dr. Gutiérrez seconded the motion. The motion carried. Please see page 76 and 77 of the attached transcript.

**HOME HEALTH AGENCY LICENSURES****Exhibit #20**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2080L	Nix JT Corporation d/b comfort Keepers #685 (Tompkins, Cortland, and Schuyler Counties)	Contingent Approval
2243L	Washington County Public Health Nursing Service (Washington County) Dr. Ruge - Interest	Contingent Approval

Mr. Booth called application 2080L and 2243L and motioned for approval. Dr. Gutierrez seconded the motion. The motion to approve carried with a noted interest in application 2243 by Dr. Ruge. Please see page 77 of the attached transcript.

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

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

**CON Applications**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #21**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 122311 E	Endoscopy Center of Long Island, LLC (Nassau County) Mr. Kraut – Recusal (not present)	Contingent Approval

Mr. Booth introduced application 122311 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 78 of the attached transcript.

**Dialysis Services – Establish/Construct**

**Exhibit #22**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 112210 B	New York Regional Services, LLC d/b/a New York Regional Dialysis Center (Kings County) Dr. Bhat - Interest	Contingent Approval

Mr. Booth called application 112210 and noted for the record Dr. Bhat’s interest. Dr. Gutiérrez seconded the motion. The motion carried. Please see 78 and 79 of the attached transcript.

**Upstate Request for Applications – Certified Home Health Agencies –  
Establish/Construct**

**Exhibit #23**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121266 E	Guthrie Home Care (Chemung County) Mr. Booth - Interest	Contingent Approval

Mr. Booth described application 121266 and noted he had an interest. Mr. Booth motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 79 of the attached transcript.

**Downstate Request for Applications – Certified Home Health Agencies –  
Establish/Construct**

**Exhibit #24**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 121233 E	United Hebrew of New Rochelle Certified Home Health Agency, Inc. (Westchester County) Mr. Fassler - Interest	Contingent Approval

Mr. Booth next moved to application 121233 and noted for the record Mr. Fassler's interest. Dr. Berliner seconded the motion. The motion to approve carried. Please see 79 and 80 of the attached transcript.

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #25**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2077L	GTD Services, Inc. dba BrightStar of North Shore Nassau County (Nassau and Suffolk Counties) Ms. Regan - Interest	Contingent Approval
1788L	Sunrise Home Care, Inc. (Putnam, Westchester and Dutchess Counties) Ms. Regan - Interest	Contingent Approval
2263L	Wyoming County Health Department (Wyoming County) Mr. Booth – Interest Ms. Hines – Interest Mr. Robinson - Interest	Approval

Mr. Booth introduced applications 2077L and 1788L and noted Ms. Regan’s interest. He then called application 2263L and noted for the record Mr. Booth, Ms. Hines and Mr. Robinson’s interest. Mr. Booth motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 80 and 81 of the attached transcript.

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

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

**NO APPLICATIONS**

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

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

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

**Exhibit #26**

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 122312 E	VDRNC, LLC s/b/a Van Duyn Center for Rehabilitation and Nursing (Onondaga County) Mr. Booth – Interest	Contingent Approval

Mr. Booth called application 122312 and noted for the record he has an interest. Mr. Booth motioned for approval which was seconded by Dr. Berliner. The motion to approve carried. Please see page 81 and 82 of the attached transcript.

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

**NO APPLICATIONS**

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

**CON Applications**

**NO APPLICATIONS**

**ADJOURNMENT:**

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

1 WILLIAM STRECK: Good morning everyone. It's my pleasure  
2 to welcome you to the meeting of the Public Health and Health  
3 Planning Council. I'm Dr. William Streck, Chair of the Council,  
4 and I have the privilege of calling the meeting to order. Just  
5 a few housekeeping details as we begin. I would remind council  
6 members and the audience that this meeting is subject to the  
7 open meeting law, and is broadcast over the internet and the  
8 webcast can be accessed at the Department of Health's website.  
9 They are available for seven days after the meeting, and for up  
10 to 30 days a copy will be retained in the Department. We have a  
11 few ground rules that we always review. Because there is  
12 synchronized captioning, it's important that we do not talk over  
13 each other. The first time you speak, please state your name  
14 and briefly identify yourself. Please note the microphones are  
15 hot so that rustling of paper or side conversations can be  
16 transmitted. There is a record of appearance form that needs to  
17 be filled out when you enter the meeting room, which records the  
18 attendance at the meeting and our guests are asked to fill that  
19 form out. It's required by the Joint Commission on Public  
20 Ethics.

21 Today's meeting in brief overview will consist of the  
22 report of the committee on regulation. Dr. Gutierrez will  
23 present regulations for emergency adoption and discussion. We  
24 have a series of Department of Health reports. We will hear  
25 from Commissioner Shah who will provide an overview report on

1 the Department of Health. Ms. Westervelt will give an update on  
2 the Offices of Primary Care and Health Systems Management. Ms.  
3 Block will report on the activities of the Office of Health  
4 Information Technology Transformation. Ms. Misa will give an  
5 update of the Office of Health Insurance Program activities. Dr.  
6 Birkhead will give a report on the activities of the Office of  
7 Public Health, and under the category of public health services,  
8 Dr. Boufford will update the Council on the important work of  
9 the Committee of Public Health. Under health policy, Dr. Ruge  
10 will update the members on the next phase of the Committee on  
11 Health Planning. We will then move to project review  
12 recommendations and establishment actions. Mr. Booth will be  
13 reporting on a number of CON applications that were reviewed by  
14 that committee.

15 I would remind members that if we have conflicts those  
16 needed to be noted, and if there are some that have not been  
17 filed, they should be noted. We will as much as possible, batch  
18 the CON applications for efficiency, but still allow adequate  
19 consideration of each. I hope everyone's had a chance to review  
20 the various applications, and ensure that our record is  
21 complete.

22 I would also like to announce the formation of an ad-hoc  
23 advisory committee on environmental and construction standards.  
24 The mission of this committee is to examine the current building  
25 construction and physical plant codes for health facilities, and

1 this is in the wake of the extreme weather experienced recently  
2 with Hurricane's Irene, and Lee and Superstorm Sandy. This  
3 forum will be an opportunity to share the lessons learned and  
4 the research conducted by government agencies, healthcare  
5 providers, design professionals, major construction companies,  
6 and to understand the effects of these storms on consumers and  
7 the general public. Bob Schmidt is the Department of Health  
8 staff member assigned to oversee this important change. (Pardon  
9 me.) The members of the committee are as follows: Jeff Kraut  
10 will chair the Committee, Michael Fassler will be the vice-  
11 chair, members of the Council who will be on the Committee  
12 include Dr. Berliner, Dr. Martin, Dr. Sullivan, and Dr. Yang.  
13 And then there are other individuals including Udo Ammon,  
14 Allison Burke, Andrew Feeney, Fred Heigel, Daniel Nichols, and  
15 Michael Primeau. So, that meeting schedule will be announced.  
16 The first meeting is in fact tomorrow here in the city.

17 I would now move to adoption of the minutes. May I have a  
18 motion to that effect? Moved and seconded. Is there any  
19 questions, discussion? Hearing none, those in favor please say  
20 aye.

21 Aye.

22 And now I turn to Dr. Gutierrez to give a report on the  
23 Codes, Regulations, and Legislation Committee. Thank you.

24

1           ANGEL GUTIERREZ:       Thank you Mr. Chair. Good morning. My  
2 name is Angel Gutierrez; I'm the chair of the Committee on  
3 Codes, Regulation and Legislation. The Committee met on May 23  
4 reviewing six regulations, one for emergency adoption, and five  
5 that were on for discussion. One of the discussion regulations  
6 is the permanent version of the emergency proposal. The  
7 emergency proposal concerns children's camps. This proposal was  
8 developed as a result of new legislation creating a Justice  
9 Center for the protection of people with special needs.  
10 Children's camps with 20 percent or more children with  
11 developmental disabilities will now be required to comply with  
12 staff screening, staff training, and incident management  
13 procedures. The regulation adds new definitions of camp staff  
14 Justice Center and reportable incidents, makes clear that  
15 reportable incidents are to be reported to the Justice Center as  
16 well as to the Department of Health. It clarifies that adequate  
17 supervision of campers includes protecting campers from any  
18 unreasonable risk of experiencing a reportable incident, adds  
19 language specifically addressing the investigation of reportable  
20 incidents, and obligates camps to cooperate with investigations  
21 and disclose information to the Health Department and Justice  
22 Center relative to reportable incidents investigation. It add  
23 requirements that camps consult the justice center staff  
24 exclusion list with regard to prospective employees, and  
25 requires camp staff to obtain mandated reporter training and



1 acknowledge that they have reviewed and understood the Justice  
2 Center code of conduct.

3 A question was raised asking if there were any comments or  
4 concerns from the special needs camps. It was reported that  
5 although the Department had not received comments from camp  
6 operators, the New York State Camp Safety Advisory Council was  
7 concerned about the rapid pace for adoption and implementation.  
8 The Department will work with the industry to get them up to  
9 speed.

10 The committee did not have quorum to vote on this  
11 recommendation, so we cannot officially recommend it for  
12 adoption to the full Council. However, after a motion and a  
13 second at the committee level, the four members present  
14 unanimously voted to recommend this measure for adoption, and I  
15 so move it.

16

17 WILLIAM STRECK: There's been a motion and a second.  
18 Are there questions? Yes, Dr. Boutin-Foster.

19

20 CARLA BOUTIN-FOSTER: This question was raised I think  
21 at the committee meeting by Dr. Sullivan and I in terms of the  
22 20 percent, and why do you need 20 percent as opposed to having  
23 one child with special needs?

24

1 WILLIAM STRECK: So, the question is probably best  
2 directed to staff in Albany. Is the question transmitted  
3 adequately to Albany, that we might solicit a response?  
4 Requires that 20 percent requirement-

5

6 We're having a building evacuation here so you'll see us -

7

8 WILLIAM STRECK: Thank you for your assistance. So  
9 we'll defer the answer - yes.

10

11 ANGEL GUTIERREZ: I could go ahead and read the other  
12 four, and postponed further action on this until they return.

13

14 WILLIAM STRECK: OK. Why don't we just table that for  
15 the moment, and we'll return to proceed. Thank you.

16

17 ANGEL GUTIERREZ: Are there any other questions that we  
18 could address on this, that may not need the staff?

19

20 WILLIAM STRECK: I have a question but I, and maybe the  
21 staff here can answer it, but, my question is the Justice Center  
22 has an enforcement arm, so does the Department of Health. Who's  
23 going to handle the management of reported incidents from this  
24 camp or from say a facility? Let's say it's reported from a  
25 hospital? Anybody know? Defer that one too?

1

2           ANGEL GUTIERREZ:       Let's wait for staff.

3

4           (I can answer that.) So, the legislation with regard to the  
5 Justice Center, in terms of the Department of Health, the impact  
6 is going to be with impacted facilities, so impacted nursing  
7 homes and impacted camps. So those that have a certain  
8 percentage of people with special needs. The 20 percent. So,  
9 under the statute and under the regulations, there's a mechanism  
10 by which for those entities that fall under the jurisdiction of  
11 the Justice Center, the Department of Health will have certain  
12 obligations to perform reviews and make reporting, and the  
13 Justice Center will have certain obligations as well. And so  
14 with regard to the nursing homes and other facilities that don't  
15 fall under the Justice Center, it'll continue, enforcement will  
16 continue as been occurring.

17

18           WILLIAM STRECK:       Ok. Dr. Gutierrez, you want to  
19 continue then with the other items, and we'll come back if they  
20 do.

21

22           ANGEL GUTIERREZ:       There was also a brief discussion of  
23 other permanent versions of this proposal which is identical to  
24 the emergency version and proceeding through the rule making  
25 process while the emergency rule is in place. The other four

1 regulations include number one, (one presented by) Ms.  
2 McMurdough and joined by Dr. Marks, Chair of the New York State  
3 Trauma Advisory Committee. They presented a proposal concerning  
4 trauma centers. A PowerPoint presentation was provided  
5 outlining the history and background of New York State trauma  
6 care, the current regulations, and the new proposal. This  
7 proposal will repeal trauma center provisions in the  
8 appropriateness review standards and part 708 of title 10 and  
9 create a new section 405.33 on under part 405 general hospital  
10 minimum standard provisions. A hospital that wants to be a  
11 trauma center must first be verified by the American College of  
12 Surgeons Committee on Trauma in order to be designated as a  
13 trauma center by the Department. The college verifies four  
14 levels of trauma centers, while the current regulations by the  
15 Department only have two levels. Discussion from committee and  
16 council members centered around the differences in the levels,  
17 particularly level one and two, if the education and research  
18 requirements for level one is an institution-specific  
19 requirement or if a consortium approach could be utilized, the  
20 costs and if there has been an analysis of the staffing cost for  
21 a hospital to get up to a desired level.

22 Dr. Ron Simon, a member of the State Trauma Advisory  
23 Committee's executive staff spoke in support stating that it is  
24 time to formally adopt and enforce these regulations to set  
25 forth the standards to become or remain a trauma center.

1           The second proposal discussed concern observation services.  
2   This proposal will repeal the observation services provision in  
3   405. 19G and create observation services provisions in a  
4   section, in a new section, 405.32 of title 10 to be in  
5   conformance with public health law section 2805V. Observation  
6   services may be provided for up to 48 hours, and patients may be  
7   assigned to the observation service only through the emergency  
8   department or by direct referral. This proposal sets forth  
9   organization and notice requirements as well as allowing for  
10  hospitals to provide observation services in inpatient beds or  
11  in distinct observation units. Hospitals federally designated  
12  as critical access hospitals or sole community hospitals may  
13  also utilize emergency department beds. Effective for dates of  
14  service May 1, 2013 or later, Medicaid payment policy and  
15  reimbursement criteria have been revised and expanded and  
16  include the change from a flat reimbursement to an hourly rate  
17  reimbursement. The expansion includes payment for observation  
18  services provided in inpatient scattered beds. Discussion  
19  centered on what types of patients would be admitted by direct  
20  referral, the need for patient advocacy and if the service still  
21  has to be under the direction of the emergency department.

22           The next proposal discussed the advanced direct  
23  supervision. The purpose of this change is to update title 10  
24  via section 400.21 to conform to changes in the public health  
25  law pursuant to the family healthcare decisions act, article 29-

1 CC and changes set forth in chapter 8 of the laws of 2010.  
2 Section 405.43 orders not to resuscitate and 700.5 advanced  
3 directives would be repealed as they are no longer valid.

4 The last proposal on the agenda for discussion concerned  
5 disclosure of confidential cancer information. This proposal  
6 amends the sanitary code to, number one, remove the requirements  
7 that research be strictly government or government sponsored.  
8 And number two, allow the release of identifiable cancer data  
9 for surveillance or evaluation activities that are government  
10 sponsored at the federal, state, or provincial level when the  
11 State Health Commissioner determines that the proposed activity  
12 is of significant public health importance and that release of  
13 identifiable information is necessary for the proposed activity.  
14 Concerns were raised about the release of identifiable data and  
15 confidentiality. Current specifications regarding the  
16 limitation of the use of data for the specific purpose for which  
17 it was disclosed and the requirements to ensure the  
18 confidentiality of other disclosed data will be retained. The  
19 need for determination by the State Health Commissioner that the  
20 activities of significant health importance and the requirement  
21 that the State Health Commissioner be satisfied that the  
22 confidentiality of the patient's identity will also be  
23 maintained. The purpose of the proposed change is to be  
24 inclusive allowing more types of relevant research access to the  
25 registry, expanding the use of the data to surveillance and

1 evaluation activities, to make it more consistent with current  
2 cancer research needs and practices and to conform the actual  
3 Health Department practices while continuing to protect patient  
4 privacy.

5 That Mr. Chairman, concludes my very happy report.

6

7 WILLIAM STRECK: Are there questions on any of the  
8 topics discussed by the Committee and presented here by Dr.  
9 Gutierrez? Hearing none, we will defer action on the initial  
10 item pending return of the evacuees and we'll just keep that on  
11 the agenda. The net effect of that fire alarm has moved Ms.  
12 Misa right to the top of our discussion list today. Having made  
13 the effort to get her, she gets the first report, so I'll turn  
14 it over to you.

15

16 MS. MISA: Well, I guess there is a major benefit for  
17 attending in person. So, good morning everyone. My name is  
18 Elizabeth Misa, and I'm with the office of Health Insurance  
19 Programs. And so I just wanted to give everyone an update on  
20 the Office of Health Insurance Programs and just really  
21 highlight some priorities for 12-13. So these are really in no  
22 order of priority, but as you can see, we have various projects  
23 to work on in 12-13, so that really includes the continuation of  
24 Medicaid redesign, the continuation of discussions with CMS on  
25 the MRT super waiver. We're also in the launching stage for the

1 FIDA demo. We're also attempting to get the DD financial  
2 challenges behind us this year, and we're in addition, preparing  
3 to launch various reforms with the ACA as well as begin or  
4 continue I should say, the State takeover of Medicaid  
5 administration.

6 So, one of the, you know, main projects within the Office  
7 of Health Insurance Programs is really Medicaid Redesign. And so  
8 the MRT action plan was a plan that really would take a full  
9 five years to implement. We're currently in year two of five,  
10 and we also continue the transition of care management for all,  
11 so that's really specific fee-for-service populations moving  
12 into mainstream Medicaid. So, three of the main populations that  
13 we will be moving into Medicaid in 2013 include community placed  
14 foster care children and the Lombardi program. Both of these  
15 received CMS approval in April, and the transition for foster  
16 care children we expect will become effective July 1, so it's  
17 approximately 6000 children statewide with the transition of the  
18 Lombardi program. That also received CMS approval. And the  
19 Medicaid only individuals received their mandatory letters in  
20 mid-May so we expect the individuals will begin enrolling into  
21 mainstream Medicaid beginning August 1. The duals who are in  
22 the Lombardi program, that transition timeline will mirror on  
23 the timeline for managed long term care. The next big  
24 population that we're looking to transition in 2013 are the non-  
25 dual nursing home populations so this is approximately 6000



1 people statewide. Right now we have a workgroup which is really  
2 comprised of Department staff and stakeholders throughout the  
3 community to attempt to work through the issues with this  
4 transition. So the discussions really will be ongoing over the  
5 next few months with this particular population.

6 So, with the MRT, the MRT really created 237 distinct  
7 projects in phase one, phase two, as well as phase three. So  
8 we're currently implementing phase one, two, and three as a  
9 large portion of those projects have been completed, but I just  
10 wanted to kind of highlight some of the main MRT initiatives for  
11 you. So the implementation of transportation management, in  
12 2013 we're going to begin to phase in to 24 counties in the  
13 Finger Lakes and in Northern New York, and we're also going to  
14 issue procurement this summer for seven counties in the Western  
15 region including Buffalo. We also continue to roll out health  
16 homes. As of June 2013 we have over 38,000 individuals enrolled  
17 in health homes, and we expect that by April 2014 to have  
18 approximately 150,000 individuals enrolled in health homes.

19 Another major initiative that we're working on is to  
20 continue funding for supportive housing efforts. So this is  
21 really Medicaid state only dollars that we are programing for  
22 capital rental subsidies and service supports for high need  
23 Medicaid members. In 12-13 we invested \$75 million for this  
24 initiative, and that money is really starting to flow. We  
25 expect that that investment will assist a little nearly 5000

1 individuals. So we're real excited with that particular MRT  
2 initiative.

3 The next initiative is we're going to continue to drill  
4 down on the Medicaid benefit package. I think the MRT benefit  
5 workgroup continues to meet, so those discussions will be  
6 ongoing in 2013, and we also plan to implement the vital access  
7 provider program. We're still waiting CMS approval for this,  
8 but we're hopeful that that will move along with - very shortly.

9 So, the next major initiative that we're working on is the  
10 MRT super waiver. So this time last year we submitted our  
11 request to the federal government. We asked for the  
12 reinvestment of \$10 billion over five years. So, discussions,  
13 we reengaged CMS and discussions on this waiver, and our goal is  
14 to receive approval within the calendar year. So that's what  
15 we're targeting for the super waiver investment. It includes,  
16 you know, various investments in primary care, health home  
17 development, new care models, (VAP) and supportive housing  
18 investments, hospital transitions, some public health  
19 innovations. We're also working with CMS on our FIDA  
20 demonstration. So some of the main tasks with FIDA are planned  
21 certification, plan readiness review as well as rate development  
22 and finalizing the MOU. So the goal date for the FIDA demo is  
23 April 1 of 2014.

24 The next issue is the financial issues with the DD problem,  
25 so this is really a decade old problem that the Cuomo

1 administration inherited. We're currently working with CMS to  
2 resolve the issues. We believe that all of the issues, the  
3 financial challenges are resolved on a prospective basis. This  
4 was really an additional cost that we were faced with totaling  
5 \$1.1 billion, most of which has been absorbed within the  
6 Medicaid cap, primarily because the MRT had been proven more  
7 successful than originally anticipated.

8 And then priority five is really ACA implementation is  
9 as well as the State takeover of Medicaid administration, so I  
10 think one of the major challenges is the IT solution associated  
11 with the exchange. It's been a very challenging project because  
12 no one has ever built on this type of IT infrastructure before,  
13 so there's definitely lots of work that has been occurring and  
14 will occur to meet the October 1 start date.

15 So that is OHIP in a nutshell. I don't know if anyone has  
16 any specific questions on any of the initiatives that were  
17 mentioned.

18

19 HOWARD BERLINER: Related to the presentation but not  
20 specifically addressed to you so much as to staff, other staff,  
21 do we have to do something about the Lombardi programs? Do we  
22 have to decertify all those programs that are on the books if  
23 we're getting rid of the program?

24

1 WILLIAM STRECK: The question is out there - oh, OK,  
2 good.

3

4 BECKY GRAY: There are continuing discussions as to what  
5 the active role of long term home health care programs will be  
6 moving into the future. Currently they are actively providing  
7 home health services in many regions, and those that have  
8 transitioned many of their patients are taking on a care  
9 coordination role using their home health agency certificate of  
10 operation to be able to do that. There's continuing discussions  
11 as to where long term home healthcare providers will be in the  
12 future.

13

14 WILLIAM STRECK: Are there other questions or comments?  
15 That's a remarkable agenda. I think we would all share that  
16 view, and the time tables are very challenging.

17 Steve, you're here for - I was looking for Rachel Block,  
18 that's why I can't see - but we do have a presentation for the  
19 Office of Health Information Technology Transformation. Go ahead  
20 Steve.

21

22 STEVE SMITH: Yeah, I actually happen to be in Brooklyn  
23 for another meeting this morning, so Rachel asked me if I'd kind  
24 of stop by and fill in for her. She sends her apologies. And

1 she also instructed me to take the subway, don't walk, don't do  
2 that whole bridge thing, so I'm glad to be here.

3 And I think we're pulling the slides up. There's two major  
4 areas that I wanted to talk about this morning. Just real  
5 quickly, one is the area of - this whole technology thing - I  
6 think they set me up. It's not advancing. The first of the  
7 area is meaningful use. As people are aware, there's two arm of  
8 meaningful use, both Medicaid and Medicare, so I just want to  
9 give you an update on where New York State stands on that  
10 program. And the other is an initiative we've recently started  
11 working on at the Centers of Medicaid and Medicare's innovation  
12 program and that's a grant award that the Department has  
13 received. On the high tech front, meaningful use, this looks as  
14 federal figures, dollars that have been paid as of the end of  
15 April under both the Medicaid and the Medicare program. To  
16 date, nationally \$41.5 billion have been distributed to eligible  
17 providers and eligible hospitals.

18 On the next slide we have what's going on in New York  
19 State. As of June - as of this month, under the Medicaid  
20 program, payments have been made to 196 hospitals and just under  
21 7000 eligible providers totaling \$378 million. On the Medicare  
22 side as of April and the cycles are a little bit off so I  
23 apologize for the little bit of a gap there, 133 hospitals have  
24 been paid and just over 13,000 eligible providers have received  
25 payments totaling \$476,000. So when you aggregate the two

1 programs together from the New York State perspective, as of  
2 April, we have a total of 329 hospitals have been paid. Yes,  
3 that's more hospitals than in New York State because some of the  
4 hospitals are eligible for payments under both Medicaid and  
5 Medicare, so when you break those apart it's a total of 329  
6 payments that have been made to hospitals. 20,000 providers,  
7 eligible providers have taken advantage of the programs, so as  
8 of the end of the first quarter, \$854 million has come to New  
9 York State in the form of meaningful use payments.

10 The next slide talks about new initiative that we've  
11 started which is with the Centers of Medicaid and Medicare  
12 Innovation. The State Innovation Model. The State Innovation  
13 Model Initiative is about providing funding to states for  
14 multipayer payment in healthcare delivery system or form. The  
15 aim here obviously is to improve the healthcare delivery system  
16 for states that are participating while containing and  
17 decreasing costs associated with the programs. The programs are  
18 specifically broad-based. They're looking at not only the  
19 Medicare/Medicaid and CHPs population but they also require the  
20 involvement of commercial payers across the State as well. So  
21 our grant became effective April 1. We've put together a straw  
22 man that we're in the process of rolling out, and I'll describe  
23 that process to you in just a minute, but the straw man has  
24 three components. The first is an enhanced primary care  
25 delivery model which uses the PCMH, person centered, patient-

1 centered medical home as the core infrastructure for the model.  
2 It then incorporates integrating behavioral healthcare into  
3 primary care, a big area of big expense area. A big area for  
4 quality improvement integrating behavioral health into primary  
5 care, and it also looks at the activities associated with the  
6 transition of care from hospital to home, from hospital to  
7 nursing home, nursing home to hospital, etcetera, etcetera. And  
8 it's believed that this enhanced primary care model will be very  
9 consistent with the New York State's prevention agenda  
10 specifically focusing on hypertension, diabetes and obesity,  
11 incorporating those into the initiatives.

12 The second part of the model include payment model change.  
13 The CMS, CMMI center has basically as part of the grant  
14 instructed states that they need to come up with a plan that  
15 will drive towards moving 80 percent of the State's population  
16 to a value-based care delivery model within the next five years.  
17 So that's obviously a very aggressive goal. It's a very big  
18 challenge that the Department has laid out in front of it. And  
19 the third part of the straw man includes the data analytics and  
20 that of support perspective which obviously is needed to be able  
21 to support the model redesign, the operation redesign. We're  
22 going to, we're envisioning using the SHINNY, the statewide  
23 Health Information Network will be relied upon heavily as will  
24 the all-payer database.

1           So where we are now in the process, it's a multi-prong  
2 approach. A very critical component of the project is to  
3 involve stakeholders on a statewide basis. This isn't something  
4 that can be done sitting in Albany from the top down. We've  
5 involved thought leaders across the State, experts, we've been  
6 having regional collaborative meetings with stakeholders across  
7 the State. I think to date we've had our first round which is  
8 five or six meetings, sets of meetings with each of the  
9 different geographies. We'll have a second round in the July,  
10 late July timeframe, and then we're envisioning a webinar that  
11 will finalize the model in September which is when the report is  
12 due to CMMI. On a state level basis, I'm not sure how our office  
13 inherited it, but we're coordinating the program, but we're  
14 working obviously very closely with other departments, other  
15 offices within the health department as well as other state  
16 agencies, specifically DFS, Department for Financial Services,  
17 OMH, OPWDD, Etcetera.

18           I mentioned the forming of strategic teams that are taking  
19 place on state agency level. We're continuing the stakeholder  
20 outreach. We've had a good set of first meetings. A lot of  
21 innovative programs going out there. One of the things  
22 interesting about this program is CMMI is not looking for net  
23 new models, but rather it's looking for states to take advantage  
24 of models and approaches to be demonstrated to be effective and  
25 efficient and that already exist within the state or in other



1 states, so they're not looking for us to recreate the wheel, but  
2 rather looking for us to identify what has worked in the State  
3 and rolling that out on a more broad based basis across the  
4 State. So we've got a lot of good input from multiple  
5 geographies across the State. We're in the process of digesting  
6 those. Simultaneously we're looking at the plans from other  
7 testing states. They're listed there, that were successful in  
8 receiving model testing awards from CMI and we'll be learning  
9 what we can from them. We're in the process of engaging a  
10 contractor to help us with some of the financial modeling, the  
11 ROI calculations, that type of thing, and we will be working  
12 with other CMMI projects that have already been awarded across  
13 the State that aren't specifically looking at these parameters,  
14 but focusing on a number of other areas.

15 So the next step for us in the CMMI plan is to create that  
16 innovative strategy, coordinating what's going on across the  
17 State, figuring out how it can be rolled out on a broader basis.  
18 We'll then be finalizing the specifications of the models to be  
19 included in the plan, and we then would be eligible to apply for  
20 another round, a major round of grant funding toward the end of  
21 the year, assuming current schedules hold true from the feds,  
22 which would bring a significant number of dollars to bear to  
23 implement the plan that we come up with and at this point we're  
24 contemplating a grant approach, RFP approach to entities across  
25 the State to roll that out.

1           So with that I'll stop and open up for questions.

2

3           VICKY HINES:    Yes, hi, can you just speak to the status of  
4 the all-payer database?  Is that something that's within a  
5 foreseeable timeframe?

6

7           STEVE SMITH:   There's some funding challenges that we're  
8 in the process of trying to overcome.  There's some 9010  
9 dollars, some waiver dollars that we're hoping to bring to bear  
10 to that, but to be quite honest at this point we're at a bit of  
11 a stall on it because of lack of funding.

12

13          TED(?):    It's wonderful news with the electronic record  
14 and the implementation and the money spent, but the question I  
15 have is, is somebody being very involved in this at the local  
16 level, there's been some data to now show that the, what was  
17 being looked for in terms of quality nationally hasn't been  
18 effected, the quality hasn't been effected as much as we thought  
19 because of various issues that were unforeseen and some  
20 foreseen.  Are we specifically looking at that in New York as  
21 it's great to have this electronic transmission of e-prescribing  
22 and supposed interconnectivity, but if we're not getting the end  
23 result, which is improved quality, then this is really not done  
24 what it's supposed to - not done.

25

1           STEVE SMITH:    Absolutely.  Part of the HEAL program, the  
2  healthcare affordability and efficiency law that everybody is  
3  aware of, there have been three, four phases that relate to  
4  health IT, so there's been major funding associated with that.  
5  Part of the dollars, part of the HEAL program that we've been  
6  responsible for related to health IT specifically relates around  
7  the evaluation component.  We've engaged independent outside  
8  entity to do that evaluation for us, and those results are just  
9  starting to come in.  So as soon as we have more information  
10 that's absolutely something we'd want to share with the Council.  
11 But a very critical component of that program.

12

13           WILLIAM STRECK:    Can I ask what is the deliverable to  
14 CMS at the end of this first phase?

15

16           STEVE SMITH:    Yeah, good question.  I probably wasn't  
17 clear up front.  CMS, CMMI, the Innovation Center actually has  
18 two different grant programs going on.  The first is or are  
19 dollars to develop a plan for the State, an innovation plan to  
20 effect the way care is being delivered and the way care is being  
21 paid for.  The second - which is the way that we received.  It's  
22 a six month grant and at the end of the six months we have to  
23 present that plan for care delivery innovation payment reform to  
24 CMMI.  The second part of the program which is a second grant  
25 application that has to be put together is how we as a state are

1 actually going to implement that plan, to basically do  
2 demonstration projects that were proposed in that plan to show  
3 that they can be effective, that they do have the return on  
4 investment, that they do have the improvement of quality that we  
5 anticipated as part of the plan that was submitted

6

7 WILLIAM STRECK? Thank you. Other questions or comments?

8 Mr. Robinson.

9

10 MR. ROBINSON: Just a quick question related to RHIOs. The  
11 funding and start up for that has been very, very important to  
12 regional planning and regional coordination of care. The  
13 general sense we get is that that seems to be now something that  
14 is taking a subordinate role to the development of the SHINNY  
15 and sort of statewide initiative and I'm just raising the  
16 question of strategically where the State is going with that,  
17 and do we see RHIOs are more transitional entities that are  
18 going to fade away as the SHINNY picks up a statewide mandate  
19 for delivering essentially the same services that these regional  
20 efforts are undertaking?

21

22 STEVE SMITH: Yeah, good question. Absolutely not. We  
23 actually are in the process of putting together a, what we refer  
24 to as qualified entity certification process, which will take  
25 entities such as RHIOs and basically do an internal review, if

1 you will, kind of an NCQA type of overview of the RHIO with  
2 criteria that have been established through the collaborative  
3 process and stakeholders across the State to certify those RHIOs  
4 to become qualified entities. The SHINNY, the Statewide Health  
5 Information Network is really the infrastructure that the RHIOs  
6 lay on top of, so a way to think about it is the RHIOs are  
7 really the connectivity point for the providers. They are  
8 powered by The SHINNY. So, the SHINNY really enables the work  
9 and facilitates the work that the RHIOs have to do. It's in no  
10 way, shape, or form intended to replace the RHIOs. They're  
11 really striving very hard to not have duplicative things go on  
12 between the SHINNY and the RHIOs. Some of the work that the New  
13 York E-Health Collaborative has done has brought some of the  
14 RHIOs together and try to take advantage of some of the  
15 economies of scale of providing some of the services so that  
16 might be what you're thinking of, that the SHINNY is replacing  
17 the RHIOs, but it absolutely is not the intention.

18

19 MR. ROBINSON: I guess the concern was more one of maybe a  
20 one-size-fits-all solution with the SHINNY where I think the  
21 city and the rest of the State might not actually line up  
22 perfectly in their infrastructure in the same way. So just  
23 thank you for that.

24

1           STEVE SMITH:    Yeah, and we absolutely recognize,  
2   healthcare is delivered locally, and there's a lot of  
3   differences on the way care is delivered in the Northern Country  
4   the way Dr. Rugge does things, and the way things are done down  
5   here in the city.

6  
7           WILLIAM STRECK:    We're not going to go into how Dr.  
8   Rugge does things, but we'll give him his time to report here in  
9   a moment.  So, under the illusion of efficiency afforded by the  
10   evacuation in Albany, we're moving forward quite adroitly, and  
11   I'll turn the program over to Dr. Boufford for a report on  
12   public health services.

13  
14          JO BOUFFORD:    Thank you.  Good morning everybody.  I wish I  
15   had the OHITT report with all the hundreds of millions of  
16   dollars, but we're not there, but I'll tell you what we've been  
17   doing.

18          I do want to come to at the end the most recent meeting of  
19   the ad-hoc leadership group on May 22, but just to take you  
20   through the updates of the, what we've been doing on the  
21   prevention agenda since the last meeting, this is a map of New  
22   York State.  It is not the regional health improvement  
23   collaboratives, nor is it the regional economic, it's yet  
24   another framework, only temporary, for TA providers to the  
25   communities.  One of the things that has been, is now up and

1 running is five contracts that were let with the support of the  
2 Robert Wood Johnson Foundation funding to the prevention agenda,  
3 to rather than do what we did last year which, last time around  
4 which was to have a grants program for communities themselves  
5 and then obviously the stronger communities were able to get  
6 those grants and the ones who needed the resources were not, we  
7 decided to go with funding a fewer number of regional technical  
8 assistance organization. So, these are the sort of general areas  
9 that are covered by these. The Adirondack Health Institute is  
10 in the blue; the Central Health Systems Agency, Syracuse, and  
11 let see, Syracuse and New York Counties is in the purple; the  
12 Healthy Capital District Initiative, Capital District Counties  
13 are in the green; the P2 Collaborative in New York State is  
14 covering the brown counties; the S2AY Rural Health Network is  
15 covering the Finger Lakes area which is red, and the Healthcare  
16 Association of New York State is doing a sort of statewide  
17 special focus with special focus on the Hudson Valley, which is  
18 in the yellow. I understand that the LIJ-North Shore  
19 collaboration with their Nassau County Observatory is working  
20 with Nassau and Suffolk Counties in a similar role although not  
21 funded by this program, and I have not mentioned New York City  
22 because New York City has not been included in this area because  
23 there is the, sort of continuing discussion about the alignment  
24 of the, at least the technical assistance activities of the  
25 statewide initiative with New York City, the work in New York

1 City, the Take Care New York initiative which is certainly very  
2 similar if a little bit bigger; 10 goals instead of 5 to the  
3 State proposal.

4 So, as I mentioned, the goal was to really try to be more  
5 purposeful in working with the coalitions we hope are being  
6 generated at the local level because of the Commissioner's  
7 guidance to hospitals and local health departments to prepare  
8 their community health plans and their community health needs  
9 assessments, do those together and compare their community  
10 health plans and benefit plans together. We did do a survey of  
11 these coalitions recently to just find out where they are and  
12 what they're doing. There was a very good response rate; 49 of  
13 the 57 counties responded. Again, New York City not in that  
14 grouping. And this gives you a sense of where they are. I think  
15 this is early in the process. Their reports are due into  
16 November, so it would be logical that most of the activity would  
17 be in the community engagement, community assessment, health  
18 needs assessment and some have actually moved into priority  
19 setting. The priority setting phase which we hope will hit mid  
20 to late summer is going to be really important, I think, for  
21 linking to the CMMS submission, because we do think that as  
22 communities really begin to identify some of these target areas  
23 like cardio vascular disease, hypertension, diabetes and obesity  
24 that there's a possibility that if there is an RFA process if  
25 the grant is received and there is an RFA process that this



1 could be synergistic with the activities of healthcare providers  
2 and health plans in that same region. So we're hoping that will  
3 be seen as a real opportunity.

4       Who's at the table? These are the reported partners.  
5 Again, hospital and government are the 'thou shalt's' part of  
6 this exercise. I think the diversity of people at the table is  
7 very satisfying at this point. This was one of the issues last  
8 time of not having broader based engagement with hospitals and  
9 local health departments, so, and then the government can be  
10 other than local health departments. So this is a work in  
11 progress. But we did hear at our meetings, several reports from  
12 local areas about how they're engaging local partners that's  
13 being done differently, naturally, in each community.

14       What are the priorities that are emerging so far? The  
15 prevention of chronic disease which is one of the five - these  
16 are the five on the left - prevention of chronic disease is the  
17 top one. This is tending to be cardio vascular disease,  
18 diabetes and obesity are getting a lot of attention so far.  
19 Happily I think the mental health and substance abuse goal is  
20 being embraced by a number of communities, and this work is  
21 being done in conjunction with, we're aware that there are  
22 mental health boards that are preparing their reports at the  
23 same time, so we're making every effort we can to connect those  
24 kinds of activities.

1           One of the charges is to identify - each community is asked  
2 to identify two of the objectives within the prevention agenda  
3 and to tackle health disparities, and so far, they are reporting  
4 work in the health disparities area, and then the early response  
5 on what are the challenges are the issue of really setting  
6 priorities and really developing the plans and testing the  
7 interventions and evaluating them, and a lot of the technical  
8 assistance efforts with these groups that I mentioned is really  
9 to try to help communities in that, in those three right hand  
10 communities, especially the two on the far right; the developing  
11 the plan and testing and evaluating interventions.

12           These are the activities that each of these technical  
13 support groups will be providing. Again, these are very small  
14 grants, but the effort is really - a lot of this will be done  
15 virtually. I think some of the technical assistance entities  
16 that are a bit bigger and have ongoing meetings and regular  
17 meetings in their regions will be doing meetings in person, but  
18 a lot of this will be done through webinars, and really as I  
19 said, focus on creating a process for monitoring with the  
20 partnerships at the local level. Some of what you saw in this  
21 survey would allow us to know where communities are and then  
22 helping people develop their coalitions and really understand  
23 how to negotiate roles and get the work done. And then obviously  
24 the dashboard is monitoring.

1           Statewide technical support; again, this is the HANYS group  
2 has really stepped up to be incredibly helpful. They've done a  
3 lot of webinars with their own hospital members and they're also  
4 providing a strong statewide series of webinars as well as  
5 helping to support an interactive website that will allow people  
6 to share information and to learn from what's going on across  
7 the State.

8           Another activity has been the development of a  
9 communications plan. This again, this was also funded by the  
10 Robert Wood Johnson Foundation in conjunction with the Rabin  
11 Martin firm that's been working with the Health Department for a  
12 little over a year. The help staff the working groups that met  
13 all last summer. And these are some of the suggestions about  
14 developing the communications plan, especially using the ad-hoc  
15 leadership group to do outreach with their respective  
16 constituencies statewide, strategies of identifying  
17 spokespeople, and meetings that are going to be happening anyway  
18 as opportunities for spreading information about the Prevention  
19 Agenda and the design of it, and creating materials that could  
20 be used in communities and also plans for improving the website.  
21 These are some of the draft materials. These are all in draft.  
22 They were discussed at the meeting of the ad-hoc leadership  
23 group. There were some interesting modifications to the map in  
24 the middle in terms of which things ought to be there and what  
25 shouldn't be there, and some of those changes have been made,

1 and this is kind of the latest version. I think there were not  
2 community health centers on the original map, for example, and  
3 others, making sure other stakeholders are represented in terms  
4 of the groups that should be in the community. You'll remember  
5 that on the button that's on the front of the health department  
6 website, the blue button is the access to the information that's  
7 been made available in the five goal areas, objectives,  
8 evidenced-based interventions and metrics that can be used with  
9 lots of resource materials. So, that is available to everybody.

10 The meeting of the ad-hoc leadership group which is our 25  
11 or so, and it keeps growing which is great, members from all  
12 kinds of sectors at the statewide level was held on May 22 in  
13 conjunction with the public health committee. We heard  
14 presentations from the Nassau County Health Department to hear  
15 how they're approaching the process locally. We also heard from  
16 Syracuse Hospital about how they're working in their community -  
17 Saratoga Hospital, sorry, in their community with various  
18 partners and especially what they're doing with their local  
19 health department with outreach to other stakeholders in that  
20 community. The CHCANYS group, the statewide network of  
21 community health centers presented, and they reminded the group,  
22 and they are on our ad-hoc leadership group, but there are 550  
23 locations around the state for community health centers, and  
24 they are developing very active toolkits and supporting  
25 mechanisms and resources for their community health center

1 members who are under federal mandates to double the volume of  
2 community health centers, but their recent strategic plan also  
3 included a significant, promoting a significant focus on  
4 population health. So they're really going to be helping move  
5 the Prevention Agenda at the local level, and they're  
6 encouraging all their community health center members to  
7 approach these coalitions and make sure they're involved.

8 Rachel Block presented the progress report on the SIM  
9 application, and there was a lot of, I think, very good  
10 discussion about the potential synergies with the Prevention  
11 Agenda and the hope that the Prevention Agenda will be seen as  
12 one of the levers along with Medicaid change and others for  
13 changing the approach to healthcare delivery systems and  
14 financing at local communities in the ways that I mentioned  
15 before. We have been starting to talk about it, and I think  
16 it's reasonable to talk about it as the important component of  
17 the triple aim, the sort of third leg of the stool in producing  
18 community health; that it can be a major synergistic factor  
19 there. We also explored, reviewed the regional technical  
20 assistance for the group, and gave them a sense -- they did talk  
21 about the communications plan. There were a lot of really good  
22 suggestions on improving the communication strategy and the  
23 materials which are being revised, especially in terms of  
24 messaging for underserved communities and the disabilities  
25 community and some of the members of our ad-hoc group and the

1 minority health council are going to help with - have already  
2 been actively sending feedback into the messaging there. I  
3 think again, financial constraints have really prevent the full  
4 scale development of things in the way we hope. We're hoping to  
5 get some voluntary support from some of our partners in the, in  
6 really developing the communications plan. And at this point  
7 there have not been the resources to do the kind of more  
8 intensive focus groups and data gathering from the communities  
9 with experiencing the greatest disadvantage as of yet. That's  
10 something we're hoping to gain support for an there is a sort of  
11 five year plan for the communication agenda, but that will have  
12 to - we're going to have to look for funding for that as well.  
13 The disparities framework is being actively developed in  
14 partnership between the Health Department and the Minority  
15 Health Council and should be available to communities, and we  
16 also discussed development of a broader sort of friends of the  
17 Prevention Agenda, sort of like the multiple partners that are  
18 technical partners in the healthy people 2020 initiatives that  
19 are run at the federal level. There are hundreds if not low  
20 thousands of businesses and universities and community-based  
21 organizations, national networks, professional associations that  
22 are listed as partners at the federal level, and we're hoping to  
23 really mobilize the broader partnerships in the State of New  
24 York. And I think - we also had some suggestions in the  
25 presentation that Rachael Block is using for the waiver to try

1 to build in some of the diagrammatic work, the Prevention Agenda  
2 as both a lever and as a component of the community-based change  
3 for healthcare delivery reform. So that is our report.

4

5 WILLIAM STRECK: Dr. Bhat.

6

7 DR. BHAT: Dr. Boufford. Sort of interesting concept. We  
8 always talk about obesity. I heard on I think the television  
9 saying that McDonalds, the CEO, lost about 20lbs eating  
10 hamburgers every day. It was on the television. I don't  
11 believe it. I think it's one of the problems that we have is  
12 the fast food industry. I think Coca-Cola and the Pepsi and  
13 some other people, I think when we are talking obesity I think  
14 there's nothing much being done in some of the inner city areas  
15 like say, some parts of Brooklyn, maybe in Bronx. Mostly of  
16 what they have is just bodegas, people are picking up potato  
17 chips and some of the junk food that's coming in. How does this  
18 fit in with some of your initiatives that you have?

19

20 DR. BOUFFORD: Well, some of the - I mean, I think the New  
21 York City Health Department Commissioner and I think the State  
22 they are in conversations with the food industry to talk about  
23 things like salt and calories and some other things. That's  
24 going to take a while. A number of the plans coming out of the  
25 local communities are really trying to respond to the risk

1 factors around obesity, especially the healthy food and exercise  
2 availability, and so you're seeing those included in the plans.  
3 This idea of the kind of if you will upstream prevention of  
4 chronic diseases, because we know that tobacco, exercise, and  
5 diet are the shared risk factors of obesity and it's relating  
6 chronic diseases like cardio vascular disease, diabetes, chronic  
7 pulmonary disease and cancer. So, we're seeing some of those  
8 intersectoral activities. Some attention at the local level to  
9 issues like zoning, issues like incentives to bring in super  
10 markets with fresh fruits and vegetables, green markets and  
11 others. So I think a lot of the things we've seen in New York  
12 City over the last number of years are spreading in the city and  
13 also are in the plans at the local level. So we're going to  
14 know more by the summer when they begin to bring them out. But  
15 there is an awareness of the fact that you've got to tackle  
16 these risk factors. I think the local action probably is harder  
17 to do other than maybe with local restaurants or other things  
18 with the actual food providers.

19

20 WILLIAM STRECK: That's a great map. That three  
21 dimensional multicolored map. Can use that a lot of different  
22 ways, but - not but - an, here's a thought; as we go through  
23 this process are we going to have sort of a standardized  
24 approach in each of those colored areas in terms of prevention?  
25 Or are we going to have this multipurpose, non-coordinated



1 county by county enterprise in trying to implement the agenda?  
2 Is there going to be an efficiency afforded in this process? Or  
3 is it going to be so community-based that we will continue to  
4 experience what I would suggest at times has been inefficient  
5 use of such resources.

6

7 JO BOUFFORD: Well, the resources are quite small to start  
8 with. We're talking about \$90,000 for the entire State of New  
9 York, so this is not - they're going to be doing what they can  
10 do and the answer to your question in terms of the technical  
11 assistance regional support, and I would hope that there will be  
12 other resources made available as we go down the road, but I  
13 think the commitment here, the difference between this time  
14 around and the last time around on the Prevention Agenda is that  
15 the Commissioner did direct hospitals and health departments to  
16 work together and to share a community health needs assessment  
17 and to collaborate in the development of priorities. They also  
18 were directed to pick two objectives at least from the menu and  
19 the venue does provide sort of evidenced-based objectives,  
20 interventions and metrics to be used in measurements. So I  
21 think the best we could say is that there's a sort of commitment  
22 to feeling that all community health improvement is local in a  
23 way, but that at least in the areas where we have this  
24 commonalities when we begin to know which communities are  
25 working on the same issues that we will have sort of standard

1 approaches and reporting mechanisms for those issues because of  
2 the things they're being asked to do in terms of their approach  
3 and that we'll be able to measure them. I think the other, if  
4 we were able to get resources, we have in mind the idea for  
5 example, really linking the communities that are working on the  
6 same issues together in a pure learning network and really  
7 providing support to them in those areas. But there really is  
8 not the infrastructure other than the kind of increased  
9 structure that was involved in the Commissioner's charge to the  
10 local communities. But I think we'll be in a better position, I  
11 think there was not an appetite for saying everybody has to work  
12 on cardio vascular disease in this way and they can do other  
13 things, so.

14

15 WILLIAM STRECK: Thank you. Dr. Sullivan?

16

17 DR. SULLIVAN: I think you said this briefly but, I think  
18 you were talking about in the new planning for payment systems  
19 that to the extent hospitals or community health centers get  
20 really involved in this kind of prevention that somehow there be  
21 incentive built in? Is that what you're suggesting?

22

23 JO BOUFFORD: We're trying to make the case that achieving  
24 the triple aim, the cost, quality and health initiatives of the  
25 State are not over here and the Prevention Agenda is over here.

1 we're trying to make the case that the Prevention Agenda could  
2 be a lever for change, which is one of the things CMMS is asking  
3 for, and that also once the communities really are mobilized  
4 around dealing with some of the very issues that the SIM  
5 proposal is discussing at least for activity I the mental health  
6 area or cardio vascular area, that when the RFA, if there is a  
7 grant RFA process out for communities, they will be able to get  
8 the synergies of the provider networks or ACOs and the plans who  
9 decide to say I want a piece of that resource to help me  
10 organize around cardio vascular disease, or hypertension.  
11 You'll have regular, ready-made community coalitions to join in  
12 that process. So we're trying to make that case so that it's  
13 seen as something that's a legitimate source of, legitimate  
14 candidate for funding and resourcing in these models that will  
15 probably emerge, hopefully emerge from the—if the grant is  
16 received on this process or in the waiver itself. Right now  
17 it's kind of - and the Prevention Agenda. So we're sort of  
18 trying to change that mindset.

19

20 WILLIAM STRECK: Thank you Dr. Boufford. We're  
21 beginning to repopulate Albany, but we will move on to Dr.  
22 Rugge. Having completed - the Planning Committee having  
23 completed a quite extensive inventory of work is now lined up a  
24 new agenda. John, you want to update us on that?

25

1           JOHN RUGGE:       Yes, the Planning Committee is back at work.  
2   Sort of like Freddie on Elm Street, we're back.  Again, as Bill  
3   indicated last year we worked on the machinery of regulation  
4   with respect to CON initially streamlining and then trying to  
5   redesign the CON process.  This time our charge is to consider  
6   how to use all the tools of public policy including but not  
7   necessarily limited to CON, for ambulatory care services across  
8   the State.

9           To say the obvious, many, many health services are  
10  migrating to the ambulatory care arena in part because of a  
11  mission focus on the triple aim, and in part due to market  
12  dynamics especially with the implementation of the ACA.  The  
13  upshot is that there are really quite new models of care coming  
14  into play.  One being the so-called mega groups.  Those groups  
15  themselves preferring to be called high performing medical  
16  practices.  Also, retail clinics or limited service sites and  
17  retail stores.  Potential for expanded roles for freestanding  
18  EDs.  New potential for upgraded D&TCs, and also expended roles  
19  and opportunities for telemedicine.  All categories that have  
20  really not been totally recognized or well defined in statute or  
21  regulation.

22           So, our charge is to consider how to create a broader  
23  spectrum of institutional categories, functioning organizations  
24  that respond and perform well in a new environment.  And that  
25  will entail, I think, looking at drawing the distinction, maybe

1 even redrawing the distinction between what constitutes private  
2 practice versus institutional practice. There is not total  
3 clarity if one looks at 600.8. Key considerations that we have  
4 identified are quality and cost service - big surprise - excess  
5 to care for low income and Medicaid recipients; stability of  
6 those providers impacted by new models of care, safety net  
7 providers, hospitals, certain high margin services leaving their  
8 institutions for other sources of care when those varied  
9 institutions are themselves really indispensable to the  
10 communities that they serve. And then also need for clarifying  
11 for consumers what to expect given so many doors to go through  
12 in terms of obtaining services.

13 So our process is one familiar to us. We're having all day  
14 meetings every month from May through November with August  
15 French style being considered a holiday month, in addition to  
16 our regular committee meetings. We're just beginning to  
17 formulate how best to do the choreography through all this. We  
18 did meet in May, the idea being to do a deep dive to understand  
19 the perspectives and challenges and the experience of the key  
20 provider stakeholders. We had candid discussions of  
21 representing physicians with (MSNY) and it's many component  
22 parts presenting. The new large physician groups, the high  
23 performing groups in a second panel. Hospital representatives  
24 from HANYS, Greater New York, and the Suburban Group. And

1 wrapping up with clinic presentations by PCDC, CHCANYS, and  
2 Family Planning Advocates.

3 A little bit to my surprise there were no fireworks. There  
4 was lots of animated discussion that was civil but clearly some  
5 divergent perspectives. But also some consensus. And that was  
6 almost to a person, no one wanted more regulation. Not only for  
7 themselves, but for other stakeholders. The exception being  
8 Family Planning Advocates who felt that CON is actually serving  
9 very well the populations that they serve, those who are most  
10 needy and otherwise might go without. There was also no  
11 opposition to bringing to the floor and recognizing services now  
12 in play and do exist. So no more having CONs which are failing  
13 to recognize the identity of radiation therapy centers for  
14 example, and those not being considered in terms of need  
15 analysis.

16 There was also not exactly surprisingly, no terrific  
17 eagerness for further fees or surcharges. But one considers how  
18 to fund, it didn't care, and the use of (HCRA)  
19 perhaps may be considered.

20 And also I think there really is respect for one another in  
21 a deep commitment that there will continue to be a diversity of  
22 services and a diversity of ways of organizing those services,  
23 making a challenge for us how best to do the boundary issues of  
24 one kind of provider versus another.

1           We also had a detailed presentation by Rachael Block  
2 regarding the State Innovation Model. Important because it  
3 represents the possibility of least modest incentive funding to  
4 begin to effect the changes and empower the changes already in  
5 play.

6           Next up on June 26 there will be another all-day meeting  
7 here in this room, and this will be our deep dive into the  
8 financial aspects of the changes we're facing. The overriding  
9 operative question being to what degree to changes in financing  
10 models and reimbursement incentives, perhaps obviate the need  
11 for certain kinds of regulation? In a global budget  
12 environment, do we need to worry about overutilization? But how  
13 fast and how to effective transition when it will not be uniform  
14 across the state; it will not be immediate.

15           We will have panels that include, or at least discussions  
16 lead by a panel of commercial payers, and Chris Booth is helping  
17 us to organize that panel as well as the HPI. Troy Oechsner  
18 from the Department of Financial Services will be available and  
19 speaking. Donna Frescatore representing the Health Exchange and  
20 also a representative from OHIP, and I look forward a little bit  
21 to hearing who that might be. In addition, currently being  
22 drafted by staff are principles for going forward, both for the  
23 process of our deliberations, and also for the outcomes we would  
24 like to see. High level statements of what the criteria should  
25 be to judge the work that we will then be getting to very

1 quickly, and it's a lot of work. In preparation, our papers  
2 outlining options and perhaps preferred options for - count them  
3 - 10 different types of ambulatory services with the idea of how  
4 should we as a council be recommending regulatory structures to  
5 address those? They include these high performing mega groups,  
6 radiation therapy done on an outpatient basis in the  
7 freestanding way, advanced medical imaging, office-based surgery  
8 and ambulatory surgical centers - they are not identical. Also  
9 limited service clinical, urgent care centers, upgraded D&Ts,  
10 freestanding EDs, and telemedicine. So, one paper for each of  
11 those 10 topics that we will review in serial fashion are just  
12 now beginning to try to determine what's the best timing how to  
13 intersect. We expect some of these topics will need to be  
14 visited and then revisited and probably again because they  
15 represent complicated issues. The idea is by fall to have  
16 recommendations ready for presentation for the Full Council in  
17 time for introduction into the Governor's legislative agenda for  
18 the coming year.

19 On the train ride to this meeting I read a circular from  
20 Arthur Webb, and I think all of us must be on Art's E-circulars,  
21 but he was asked about whether given all the attacks made now  
22 for the developmentally disabled programs, he was feeling  
23 beleaguered and angry having been the inventor of so many of  
24 those programs. And his reply was, "not really. But things  
25 change and we have to change with them. We have to take our



1 leadership roles and build new models of care." Sounds familiar.  
2 He also added a caution, and I'm quoting, and that is that "I  
3 have to put up that the government cannot dictate or regulate  
4 innovation and change. Innovation and change has to come from  
5 the energy and determination from the field, from the bottom up.  
6 It must come from providers, families, advocates, and yes, from  
7 today's consumers." I think that's all a given and all true, and  
8 yet we also know is public policy and the rules and regulations  
9 that are attended them, what creates the ground for change. The  
10 new groups, the groups of hundreds of physicians coming together  
11 didn't come 20 years ago or 10 years ago; they're coming now.  
12 Really because of the ACA. And because of changes and  
13 expectations the government is laying on. And yet the  
14 innovation is coming from the private sector. And I think this  
15 council, all of us are really privileged on the one hand have a  
16 private life in which we're undertaking those kinds of changes  
17 in our own field and yet have here public responsibility to say  
18 how do we shape those activities through regulation, through  
19 oversight, for the public good? And that's the work that we're  
20 trying to undertake as a committee going forward and expect to  
21 have a very full plate of suggestion and recommendations for the  
22 Council, the Department and the Governor later in the fall.

23

24 WILLIAM STRECK: Thank you, John. Questions? Comments?  
25 Dr. Palmer.

1

2 DR. PALMER: I just wanted to mention that the labor  
3 unions were also at that discussion, and they voiced some  
4 concerns about current quality issues at it relates to the  
5 bigger practices. And they were kind of the only voice that was  
6 concerned about regulation in the opposite direction, that maybe  
7 we should take a look at increasing regulation in some way form  
8 or fashion. So NYSA and I think 1199 were the two that were  
9 there.

10

11 JOHN RUGGE: Very good point. As always, as a committee  
12 we really depend upon public input, take it very seriously and  
13 try to include it and put not only at the end of our meetings,  
14 but intertwined with everything we do.

15

16 WILLIAM STRECK: Other questions or comments? Ms.  
17 Rautenberg.

18

19 ELLEN RAUTENBERG: John, I was just at a recent meeting  
20 where the RICs were discussed, and I think we need to put that  
21 sort of into the equation here because I found that the sort of  
22 anti-regulation movement, whatever, seemed to be also extended  
23 to the planning conversations. In fact, there was a piece of the  
24 conversation where one, a prominent person in the provider  
25 community basically said the RIC should really be doing public

1 health, and not about service delivery and planning for services  
2 for people. And I think they kind of converge at some level.  
3 I'm not quite sure where I'm going with this, but we should not  
4 just assume it extends to regulations qua CON, but then the  
5 question of how planning fits in here and what the roles of  
6 those RICs are, are sort of getting, not convoluted, but they're  
7 crossing paths here.

8

9 JOHN RUGGE: We just heard from Dr. Boufford that public  
10 health should extend into all we're doing in the delivery system  
11 as well. I think there is also a bubbling up of real interest in  
12 the RICs and planning around the State including in the  
13 legislature and an interest at least beginning with a few pilot  
14 programs that will pick up the recommendations that we made as a  
15 council and test them in real life.

16

17 WILLIAM STRECK: Thank you. Thanks, John. I notice  
18 that Albany is repopulated, which allows Dr. Gutierrez to resume  
19 his role as chair of the Committee of Codes, Regulations, and  
20 Legislation. And so, in greeting, regreeting our Albany  
21 colleagues we have a question in regard to - oh, Dr. Boutin-  
22 Foster, you want to lead with your question again. Thank you.

23

24 CARLA BOUTIN-FOSTER: So, the question that I have is  
25 why is it 20 percent? Why the 20 percent requirement? So if

1 you have 50 kids and 7 as opposed to 10 of them have  
2 developmental needs, will this not be applicable to this  
3 facility?

4

5 TIM SHEA: Can you hear me?

6

7 WILLIAM STRECK: Yes we can.

8

9 TIM SHEA: This is Tim Shea with the State Health  
10 Department, and I heard the first part of the question, but I  
11 may have to ask for the second part to be restated.

12

13 CARLA BOUTIN-FOSTER: It was just one question.

14

15 TIM SHEA: OK. The applicability of the regulation to camps  
16 that have 20 percent or more is a preexisting requirement in our  
17 regulation. Our regulation, which was established for this  
18 portion in 1986 imposes additional requirements for camps that  
19 have 20 percent or more developmentally disabled population.  
20 Now, I was able to go back into our historical files. I was not  
21 around at the time or involved in the program at that point in  
22 1986, but the record is a little sketchy as to why or how 20  
23 percent figure was settled upon. I can say that the initial  
24 proposal for the additional requirements was to have camps with  
25 at least 50 percent of the population be developmentally

1 disabled, and that was reduced from the original down to the 20  
2 percent when the regulation was passed, with no justification  
3 for that amount. Now, I will say that I think there's a  
4 theoretical threshold. There's some additional expenses that  
5 are imposed on camps with 20 percent or more, whether it be for  
6 additional staffing, higher certification requirements for the  
7 medical staff, and there must've been some cost assessment done  
8 to say that we need a make/break point of 20 percent or more.  
9 That's the best that I could find out.

10

11 I also wanted to make a clarification, before, with regard  
12 to the justice center and it's jurisdiction. I had mentioned for  
13 New York State Department of Health purposes certain camps, and  
14 I've mentioned nursing homes. I mean to say adult homes. So  
15 when I was sitting watching one of the presentations I realized  
16 my mistake and wanted to clarify that.

17

18 WILLIAM STRECK: Thank you. So Dr. Gutierrez, do you  
19 want to proceed?

20

21 ANGEL GUTIERREZ: So, we have made a motion and I believe  
22 we did have a second to accept this as an emergency. And so  
23 it's up to you.

24

1 WILLIAM STRECK: We have a motion and a second to  
2 approve this proposed regulation. Is there further discussion  
3 in the group? Dr. Sullivan.

4  
5 DR. SULLIVAN: I understand kind of where it came from, but  
6 I'm assuming, although maybe I shouldn't assume that there are  
7 still reporting requirements for camps if something should occur  
8 with some of these disabled children that's still required,  
9 perhaps not as an indepth an investigation. Is something asked  
10 for?

11  
12 TIM SHEA: Yes. There are existing requirements for  
13 reporting to the local health department that has jurisdiction.  
14 We also conduct thorough investigations of all serious  
15 incidents; a death would certainly put part of that, but we also  
16 investigate other more minor incidents, and any allegations of  
17 inappropriate sexual abuse or physical abuse is reported and  
18 investigated as well. So, these requirements are in addition to  
19 what all camps need to implement and we still have a baseline  
20 that we oversee for other camps without the 20 percent.

21

22 DR. SULLIVAN: Thank you.

23

24 TIM SHEA: And If I could I have one more thing to add, and  
25 it's more of a, there was an omission in our regulatory impact

1 statement for costs, and it does not impact the regulation at  
2 all. But we just wanted to highlight that. While we're working  
3 toward implementing this we found that there was a cost that  
4 would be imposed on camps of \$25 per individual for screening  
5 through the safe center register, and that did not end up in the  
6 impact statement that you

7 So, we will be making a future amendment to that, but just  
8 wanted to highlight that as part of your position.

9

10 WILLIAM STRECK: Further discussion? Questions? Dr.  
11 Gutierrez.

12

13 ANGEL GUTIERREZ: just a comment; I believe that this  
14 feels to me in any event, an additional umbrella, a bunch of  
15 umbrella already present to protect children from abuse,  
16 particularly sexual abuse. For whatever reason those that are  
17 better understanding the need feel there is an emergency and I  
18 think that we need to proceed.

19

20 WILLIAM STRECK: We have a motion, we have a second. Is  
21 there further discussion? Hearing none, I would ask for those  
22 in favor of the motion as presented to say aye?

23 Aye

24 Opposed? Thank you, the motion carries.

25 Dr. Gutierrez, that concludes your report.

1

2           ANGEL GUTIERREZ:       That is correct.

3

4           WILLIAM STRECK:       One abstention? I'm sorry. OK. So  
5 now we'll come back to the Department of Health reports. I see  
6 Ms. Westervelt. I don't see the Commissioner, so Karen do you  
7 want to give the OHSM report?

8

9           KAREN WESTERVELT:    In lieu of the circumstances in the  
10 hour, I'll be very brief. Just wanted to make one mention, as  
11 of yesterday, the Department of Health sent out a Dear  
12 Administrator letter as it relates to a new initiative that we  
13 have as we go into the next hurricane season,  
14 initiative called (efind) it is a patient tracking system that  
15 we've put in place for residential healthcare facilities which  
16 would impact adult care facilities, nursing homes, and  
17 hospitals, and basically what the system is, and we'll get some  
18 initial information out to you and we'll set up actually if  
19 there's an interesting demo in that regard for you. But  
20 basically it's a system where it's a bracelet with a bar code  
21 for the patient with scanning equipment that the healthcare  
22 facility would use on both the receiving and sending end that  
23 would provide the information that we need to be able to track  
24 patient during an emergency. So, that's just one brief update.



1           And the other thing I wanted to mention, and my apologies  
2 for not being there in person, we've just engaged in the review  
3 for the SUNY Downstate sustainability plan. Time frame is very  
4 short, so SUNY had submitted a sustainability plan to the  
5 Department and to the Division of Budget. We're in the course of  
6 doing the analysis on that and hope certainly by the next  
7 meeting obviously we'll have more information to report out on  
8 that.

9           And the other thing I wanted to mention is we've got a  
10 large number of healthcare providers that are asking about where  
11 the status of the                    provider grant dollars are in New  
12 York State and would say that conversations are still ongoing  
13 with CMS. I'm trying to get that approval because those  
14 operational dollars are certainly going to be much needed for  
15 our healthcare providers as they're going through a period of  
16 change and restructure. But I'll leave it there to answer any  
17 questions that anyone may have.

18

19           WILLIAM STRECK:           Questions from the group for Ms.  
20 Westervelt? All right, thank you very much. Dr. Birkhead,  
21 you're next on our flexible list here.

22

23           GUS BIRKHEAD: I will also be very brief. I just wanted to  
24 update the Council on the Department's efforts to go forward  
25 with our public health accreditation process. I think we've

1 talked to you before about the fact that there is now a national  
2 public health accreditation board that accredits state and local  
3 health departments. Currently two state health departments and  
4 14 - excuse me, 12 local health departments have been  
5 accredited. I would note that Livingston County in New York is  
6 the sole county health department in New York that's been  
7 accredited. Joan Ellison was the retired now director of that  
8 health department, was on the public health council for many  
9 years. So Joan was able to pull her department through to  
10 become accredited with the national body, which is quite an  
11 accomplishment for her.

12 Where we are in this process is that we have submitted our  
13 initial paperwork which includes Prevention Agenda, our  
14 strategic plan, and other documents. Sylvia Pirani is our lead  
15 on this and has attended a training now, and so we are, we have  
16 a one year clock ticking to put documents up on the  
17 accreditation website that demonstrate our proficiency in 12  
18 different areas; 10 of them being the 10 essential public health  
19 services and two additional areas related to administration. So  
20 we're in that process. We've formed 12 different workgroups I  
21 the Department to develop the documentation. As with any  
22 accreditation process this is really demonstrating through  
23 compiling documents that you have the necessary policies and  
24 procedures, etcetera, in effect. So we're going through that.  
25 At some point in the process we will have a site visit, and then

1 hopefully move ahead and become one of the first states and  
2 probably the first large state to undertake this.

3       Because of our efforts in accreditation, I think that did  
4 attract the attention of the Robert Wood Johnson Foundation and  
5 was a direct result of that was I think the funding that came  
6 for the promotion of the prevention agenda which Dr. Boufford  
7 talked about earlier. These are all tied together, the  
8 prevention agenda, and the accreditation process, and has  
9 attracted quite a bit of interest, including, as I say, from the  
10 Robert Wood Johnson Foundation because New York is a big state  
11 and this is a new accreditation process. So they're following  
12 along with interest on our progress on that.

13       So, I think I'll leave it there, and see if there are any  
14 questions on that or other topics.

15

16       WILLIAM STRECK:       Are there questions or comments?

17

18       MICHAEL FASSLER:       On a different topic, anything new in  
19 terms of surveillance? There's a couple of viruses; one in the  
20 Mid-East, one in China? Anything to report on that?

21

22       GUS BIRKHEAD:       In my more extended remarks, I was going to  
23 cover that, so you've given me the opportunity to say a little  
24 bit more. Last meeting I did update folks on the H7N9 influenza  
25 issue in China. That seems to be quieting down now. There's

1 been only I think one case in the last few weeks, and that may  
2 be because of the efforts in China to chickens  
3 in their large chicken markets. But it also may be that the  
4 season is changing and the conditions for transmission of  
5 influenza may be less. So the influenza obviously goes through a  
6 seasonal cycle. So, whatever the reasons, I think we're still  
7 not out of the woods. The United States has gone on to a more  
8 urgent footing in terms of it's preparedness activities. There  
9 are seed viruses being prepared in the vaccines. There are  
10 trials that will be underway to demonstrate the effectiveness of  
11 those vaccines, and we at the State level are being asked to  
12 review our, and are reviewing our pandemic preparedness plans.  
13 So, those efforts will go underway. We don't know if this will  
14 return in the next flu season next year. It very possibly  
15 could. Like the H5N1 bird flu that we've also been tracking for  
16 the last five or more years, this may pop up again in different  
17 places in the future and we need to be vigilant, and as I say,  
18 this is moving forward our preparedness.

19 There's a different issue happening in the Middle East  
20 where a coronavirus, the same type of virus that caused the SARS  
21 outbreak in 2004 I believe it was. There is a related  
22 coronavirus Middle East respiratory syndrome, coronavirus that  
23 has caused a number of cases in Saudi Arabia and now in several  
24 European countries. There's some evidence of person to person  
25 transmission, but that's been limited. So, this is another

1 example of the international, I would say network of public  
2 health surveillance that's out there through laboratory and  
3 through agencies like CDC where we identify what, at least these  
4 sorts of incidents may have been happening historically and may  
5 not have been recognized, but today with laboratory testing and  
6 healthcare systems, these patients come to attention and are  
7 diagnosed. So we're tracking this one as well. There have been  
8 no cases or even suspect cases that I'm aware of in the United  
9 States. We do, CDC has produced a test kit for the State Health  
10 Departments, and so if a suspect patient came into the country  
11 we would be able to test that individual. We have sent alerts  
12 out to the hospital systems, the hospitals to be on the lookout  
13 in patients with severe respiratory distress syndrome who have a  
14 travel history. This should certainly be considered in the  
15 diagnosis, but we haven't, that I'm aware of, had a suspect case  
16 brought to our attention.

17 So on both the H5N9 and H7N9 and the - It's MERS, Middle  
18 East Respiratory Syndrome, coronavirus, the public health system  
19 is on alert. We have the ability to test for these and are  
20 partnering with the healthcare system. If patients come to  
21 attention we will certainly work them up for this and be sure that  
22 they're under appropriate isolation for cautions while they're  
23 being cared for.

24

25 WILLIAM STRECK: Ms. Rautenberg.

1

2           ELLEN RAUTENBERG:    I just want to remind the Council that  
3 the State budget had a five percent across the board cut for  
4 prevention programs. This is in addition to the federal  
5 sequestration cuts. So my question, Gus, is have you found  
6 areas in the Department and in the portfolio of prevention  
7 programs that you feel have been severely impacted by this?

8

9           GUS BIRKHEAD:   Well, we're in the process not of putting  
10 together our budget plans and expenditure plans. A five percent  
11 cut is a five percent cut. I think we're working to absorb that  
12 with the least impact possible in all the areas, so I think  
13 we're - we are not ending any programs. We are working to  
14 improve efficiency, of course, and to I think we're moving ahead  
15 basically with all programs at the five percent cut level.

16

17           WILLIAM STRECK:       Are there other questions for Dr.  
18 Birkhead? Thank you.

19           We will now move to the project review recommendations and  
20 establishment actions. I'll turn the meeting over to Mr. Booth.

21

22           CHRIS BOOTH:    Thank you. I'm going to start by batching  
23 three applications for, construction applications for acute care  
24 services.

1 Application 122216C, University Hospital, Suffolk County.

2 Construct a solitary structure on campus extending into two  
3 towers and convert 10 pediatric beds into 10 medical-surgical  
4 beds. Both the Department and the Committee recommended  
5 approval with contingencies.

6 Application 122303C, Northern Dutchess Hospital. Construct  
7 a new four-story building to replace 40 medical-surgical beds  
8 and 6 replacement operating rooms. Both the Department and the  
9 Committee recommend approval with conditions and contingencies.

10 Application 131101C, Montefiore Medical Center-Jack D.  
11 Weiller Hospital of Albert Einstein College Division. Renovate  
12 and recertify an inpatient medical-surgical unit comprised of 21  
13 beds located on campus. Both the Department and the Committee  
14 recommended approval with conditions and contingencies, and I so  
15 move them,

16

17 (second.)

18

19 WILLIAM STRECK: The proposals have been recommended by  
20 the Committee and seconded. Is there discussion on any of, or  
21 any one of the proposals? Hearing none, those in favor of the  
22 motion as presented, please say aye.

23

24 Aye.

25

1           Opposed? Thank you. The motion carries.

2

3           CHRIS BOOTH: Application 131114C, Brookhaven Memorial  
4 Hospital Medical Center, Suffolk County. Construct an addition  
5 to the main building creating a centralized suite for cardiac  
6 services and four new operating rooms. Both the Department and  
7 the Committee recommend approval with conditions and  
8 contingencies, and I move it.

9

10           (second.)

11

12           WILLIAM STRECK: A motion and a second. Is there  
13 discussion? Hearing none, those in favor please say aye.

14

15           Aye.

16

17           Opposed? Thank you. The motion carries.

18

19           CHRIS BOOTH: I'm next going to batch a number of CHHA  
20 applications.

21           Application 121238C, Visiting Nurse Service of Schenectady  
22 and Saratoga. Expand their existing certified home health agency  
23 into Albany, Schoharie, Warren, Franklin, and Essex Counties.  
24 Dr. Rugge has an interest. Both the Department and the  
25 Committee recommended approval with a condition.



1           Application 121317C, VNA of Albany. VNA of Saratoga. VNA  
2 of Rensselaer. Expand the existing certified home health agency  
3 services to Columbia, Fulton, Greene, Montgomery, Schenectady,  
4 Schoharie, and Warren Counties. Both the Department and the  
5 Committee recommend approval with a condition.

6           Application 121443C, Hudson Valley Long Term Home  
7 Healthcare Program, Ulster County. Expand the program with a  
8 certified home health agency serving Ulster County. Both the  
9 Department and the Committee recommend approval with a  
10 condition.

11          Application 131184C, Calvary Hospital. Expand the existing  
12 certified home health agency to Rockland and Putnam Counties.  
13 Both the Department and the Committee recommended approval with  
14 a condition.

15          Application 121219C, Park Gardens Rehabilitation and  
16 Nursing Center, LLC. Convert their long term home healthcare  
17 program to a CHHA that would serve Bronx, New York, Manhattan  
18 and Westchester Counties. Both the Department and the Committee  
19 recommend approval with a condition, and I move the group.

20

21           (Second.)

22

23          WILLIAM STRECK:           There's a motion to approve this batch  
24 of applicants, and the motion's been seconded. Is there  
25 discussion? Mr. Booth.

1

2           CHRIS BOOTH:    One comment.  At the last meeting we talked  
3 about the materials that supported the application and had  
4 requested some additional information that would tie the  
5 analysis to the criteria, and I want to say that I'm very  
6 appreciative that information was presented was very helpful,  
7 and thank you very much to the Department staff.

8

9           WILLIAM STRECK:    Additional comments or questions?  
10 Hearing none, those in favor of the motion as presented, please  
11 say aye.

12

13           Aye.

14

15           Opposed?  Thank you.  The motion carries.

16

17           CHRIS BOOTH:    Application 121069C, St. John's Episcopal  
18 Hospital, South Shore.  A conflict has been declared by Dr. Bhat  
19 who is leaving the room.

20           Dr. Bhat has left the room.  Permanently certify four  
21 intensive care unit beds that received temporary emergency  
22 approval on August 4, 2011.  Both the Department and the  
23 Committee recommend approval with conditions and contingencies,  
24 and I move it.

25

1 (Second.)

2

3 WILLIAM STRECK: There's a motion and a second. Is  
4 there discussion on the motion? Hearing none, those in favor  
5 please say aye.

6

7 Aye.

8

9 Opposed? Thank you. The motion carries.

10

11 CHRIS BOOTH: Dr. Bhat is returning to the room.  
12 Application 121139C, Visiting Nurse Association of Central New  
13 York. Interest declared by Mr. Booth. Expand their existing  
14 certified home health agency into the surrounding Central New  
15 York regional counties which include Cayuga, Jefferson, Oneida,  
16 and Oswego. Both the Department and the Committee recommend  
17 approval with a condition, and I so move.

18

19 (Second.)

20

21 WILLIAM STRECK: A motion and a second. Discussion?  
22 Hearing none, those in favor, please say aye.

23

24 Aye.

25

1 Opposed? Thank you. The motion carries.

2

3 CHRIS BOOTH: Application 121170C, Rosa Copland Jewish  
4 Home and Infirmary, Erie County. Conflict has been declared by  
5 Dr. Gutierrez who has already left the room. And interest by Mr.  
6 Booth. Convert the long term home healthcare program into a  
7 certified home health agency serving Erie County. Both the  
8 Department and the Committee recommend approval with a  
9 condition, and I so move.

10

11 WILLIAM STRECK: Moved and seconded. A second?  
12 Seconded by Mr. Fassler. Discussion? Hearing none, those in  
13 favor, aye.

14

15 Aye.

16

17 Opposed? Thank you. The motion carries.

18

19 CHRIS BOOTH: Dr. Gutierrez is returning to the room.  
20 There are three applications I will batch together here.  
21 121304C, Twin Tier Home Health. Expand it's existing certified  
22 home health agency service area from Broome County to include  
23 Chenango, Delaware, and Tioga Counties. Both the Department and  
24 the Committee recommend approval with a condition.

1           Application 121319C, Schofield Residence requests approval  
2 to establish a certified home health agency to serve Erie and  
3 Niagara Counties. Interest declared by Mr. Booth. Both the  
4 Department and the Committee recommend approval with a  
5 condition.

6           Application 131185C, Bethel Nursing Home. Expand the long  
7 term home health program by establishing a certified home health  
8 agency to serve Putnam County. Both the Department and the  
9 Committee recommended approval with a condition, and I move  
10 them.

11

12           (Second.)

13

14           WILLIAM STRECK:       The applicants have received  
15 recommendation of approval with a second discussion? Dr.  
16 Boutin-Foster. Thank you. Is there discussion. Hearing none,  
17 those in favor, aye.

18

19           Aye.

20

21           Opposed? Thank you.

22

23           CHRIS BOOTH:       Application 121221C, Gazmel New York Inc.,  
24 d/b/a Revival Home Healthcare. Conflict has been declared by  
25 Dr. Bhat who is leaving the room. Dr. Bhat has left the room.

1 Convert and existing special needs certified home health agency  
2 to a general purpose CHHA and expand the geographic service area  
3 to include Richmond and Suffolk Counties. Both the Department  
4 and the Committee recommended an approval with a condition, and  
5 a contingency, and I move it.

6

7 (Second.)

8

9 WILLIAM STRECK: A motion and a second. Discussion?  
10 Hearing none - Mr. Abel.

11

12 CHARLIE ABEL: I'm sorry. I just noticed that we have -  
13 it's a typo there. It should be Gamzel, not Gazmel. The M and  
14 the Z is transposed, just for clarification.

15

16 WILLIAM STRECK: Wordsmithing noted, clarification  
17 included. Is there any further comment or discussion on the  
18 motion which has a second? Hearing none, those in favor, please  
19 say aye.

20

21 Aye.

22

23 Opposed? Thank you.

24

1           CHRIS BOOTH:    Application 121437C, Community Health Center  
2   for St. Mary's Health Care and Nathan Littauer Hospital. Expand  
3   the service area of it's CHHA from Fulton and Montgomery  
4   Counties to include Hamilton, Herkimer, Saratoga, Schoharie, and  
5   Warren Counties. Both the Department and the Committee  
6   recommended approval with a condition and a contingency, and I  
7   move it.

8

9           (Second.)

10

11           WILLIAM STRECK:       A motion and a second. Is there  
12   discussion? Hearing none, those in favor please say aye.

13

14           Aye.

15

16           Opposed? Thank you, the motion carries.

17

18           CHRIS BOOTH:    Application 121322C, Lutheran Long Term Home  
19   Healthcare program. Expand the existing long term home  
20   healthcare program services by establishing a certified home  
21   health agency to serve Suffolk and Dutchess Counties. The  
22   Department recommended approval with a condition, and the  
23   Committee recommends approval with a condition with one member  
24   abstaining, and I move it.

25

1 (Second.)

2

3 WILLIAM STRECK: A motion and a second. Discussion?

4 Those in favor aye?

5

6 Aye.

7

8 Opposed? Thank you. An abstention noted by Ms. Hines.

9

10 CHRIS BOOTH: Application 122205C, Women and Children's  
11 Hospital of Buffalo, Erie County. Interest declared by Mr.  
12 Booth. Construct a replacement facility and relocate it's  
13 operations to the Buffalo Niagara Medical Campus located at 818  
14 Ellicott Street in Buffalo. The Department recommended approval  
15 with contingencies. The Committee recommends approval with  
16 contingencies with one member opposing the application, and I  
17 move it.

18

19 (Second)

20

21 WILLIAM STRECK: A motion and a second for approval.

22 Discussion? Mr. Robinson.

23

24 MR. ROBINSON: The applicant has raised an issue regarding  
25 the potential conflict on my part with regard to overlapping



1 service areas for their children's hospital and the Golisano  
2 Children's Hospital in Rochester. My opposition to the  
3 application had nothing to do with the children's hospital  
4 program which I absolutely support, but rather with the planning  
5 assumptions around the obstetrical services associated with the  
6 project. The obstetrical services in my view are built at over  
7 capacity and make assumptions about market share shifts that I  
8 think are a little bit ambitious. Nonetheless, as a result of  
9 that inquiry, I will both declare an interest and abstain  
10 during the vote.

11

12 WILLIAM STRECK: Thank you. Is there further discussion  
13 on the application which has received a recommendation for  
14 approval, and has been seconded. Dr. Strange.

15

16 DR. STRANGE: So, does the Department look at that, what  
17 was just brought up in terms of trying to figure out the  
18 demographics and the changes that may be occurring there to  
19 ensure that capacity is not an issue?

20

21 WILLIAM STRECK: Mr. Abel.

22

23 CHARLIE ABEL: Yes. At Committee we had a discussion.  
24 There are some market share increases in certain areas of the  
25 State that are anticipated by the applicant. The applicant's

1 bed complement is such that they will actually, if they achieve  
2 all that they expect to achieve it'll actually put them a little  
3 over the Department's optimal occupancy. So there's room,  
4 certainly room there for them to fall short of actual  
5 utilization - their actual utilization can fall short of their  
6 projected utilization and they would still be within Department  
7 standards.

8

9 WILLIAM STRECK: Other questions or comments? The  
10 motion has been made and seconded. Discussion? Hearing none,  
11 those in favor of the motion noting Mr. Robinson's abstention.  
12 Please say aye.

13

14 Aye.

15

16 Opposed? Thank you.

17

18 CHRIS BOOTH: Application 121456C, Fort Tryon Center  
19 Rehabilitation and Nursing. Establish a certified home health  
20 agency to serve Bronx, Queens, and New York Counties. The  
21 Department recommended approval with a condition, and the  
22 Committee recommended approval with a condition with one member  
23 abstaining. And I so move.

24

25 (Second.)

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WILLIAM STRECK: Moved and seconded. Discussion?

Hearing none, those in favor aye.

Aye.

Opposed? Abstention? One abstention. Ms. Hines. Thank  
you.

CHRIS BOOTH: Application 122271E, St. Peter's Health  
Partner. Approval to become the active parent and cooperator  
for all of the SPHP providers and to co-establish each article  
28 hospital within the SPHP Healthcare System and Eddy Village  
Green for purposes of forming an obligated group. Dr. Ruge has  
declared an interest. Both the Department and the Committee  
recommend approval with contingencies, and I move it.

(Second.)

WILLIAM STRECK: Motion moved and seconded. Further  
discussion? Hearing none, those in favor aye.

Aye.

Opposed? Thank you. Motion carries.

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CHRIS BOOTH: Batch the next several.

Application 122207E, Center for Specialty Care. Transfer 52 percent of stock from a majority shareholder to four existing minority shareholders. Both the Department and the Committee recommend approval with contingencies.

Application 131050B, New York Center for Ambulatory Surgery. Establish and construct a multispecialty ambulatory surgery center to be located at 309 East 94<sup>th</sup> Street in New York. The Department and the Committee both recommend conditional and contingent approval with the expiration of the operating certificate five years from the date of it's issuance.

Application 131056B, the Endoscopy Center of Queens. Establish and construct a single specialty ambulatory surgery center specializing in gastroenterology to be located at 23-25 31<sup>st</sup> Street, Astoria. Both the Department and the Committee recommend conditional and contingent approval with an expiration of the operating certificate five years from the date of it's issuance.

Application 131064E, Mid-Town Surgery Center. Establish several new members of the multispecialty ambulatory surgery center located at 305 East 47<sup>th</sup> Street. Both the Department and the Committee recommends approval with contingencies and I move the group.

1 (Second.)

2

3 WILLIAM STRECK: Moved and seconded. John, here are  
4 some more candidates to testify before your committee. There  
5 further discussion on any of these applicants? Mr. Robinson.

6

7 MR. ROBINSON: Just a general comment. I don't know if  
8 members of the committee had the opportunity to read the article  
9 in the New York Times about two Sundays ago, maybe it was last  
10 Sunday, regarding overall cost of healthcare and sighting  
11 gastroenterology procedures specifically as a major culprit, and  
12 the movement of these programs into facilities structured under  
13 regulations such as we have that are actually driving costs up  
14 with no added public health benefit. So this is the issue again  
15 of freestanding ambulatory surgery centers and whether or not  
16 they really are cost saving or whether they actually are  
17 additional drivers of cost, both to the State and to the public  
18 at large. Just a comment. No action required.

19

20 WILLIAM STRECK: This is the time for comments. Are  
21 there any other comments on the applications that were batched  
22 as batched with a motion for approval and a second. Hearing no  
23 further discussion, those in favor please say aye.

24

25 Aye.

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Opposed? Thank you, the motion carries.

CHRIS BOOTH: Batch the next three.

Application 131054E, Cortlandt Operations, LLC d/b/a Cortlandt Healthcare. Establish Cortlandt Operations, LLC, as the new operator of Cortlandt Healthcare. Please note that contingency number three should be removed. Both the Department and the Committee recommend approval with contingencies.

Application 131068B, Judson Meadows Residential Healthcare Center. Construct a 192 bed nursing home to partially replace the existing Baptist Health Nursing and Rehab Center and establish Judson Meadow Residential Healthcare Center as a cooperator. Both the Department and the Committee recommend approval with a condition and contingencies.

Application 131100E, Cosden LLC d/b/a Palatine Nursing Home. Establish Cosden LLC as the new operator, owner and operator of Palatine Nursing Home. Both the Department and the Committee recommend approval with contingencies, and I move the group.

(Second.)

1 WILLIAM STRECK: The group has been presented. There is  
2 a motion made. A second. Is there discussion? Hearing none,  
3 those in favor please say aye.

4

5 Aye.

6

7 Opposed? Thank you. The motion carries.

8

9 CHRIS BOOTH: Application 131103E, Tri-Borough Certified  
10 Health Systems of New York, LLC, d/b/a Family Care Certified.  
11 Establish Tri-Borough Certified Health System of New York as the  
12 new operator of Family Care Certified Services of Brooklyn,  
13 Queens certified home health agency. Both the Department and  
14 the Committee recommended approval, and I so move.

15

16 (Second.)

17

18 WILLIAM STRECK: Moved and seconded. Discussion?  
19 Hearing none, those in favor aye.

20

21 Aye.

22

23 Opposed? Thank you. The motion carries.

24

1           CHRIS BOOTH:    Application 121213E, Fort Hudson Certified  
2 Home Health Agency. Interest declared by Dr. Rugge. Establish  
3 a certified home health agency program to serve Warren and  
4 Washington Counties. The Department and the Committee  
5 recommended approval with a condition and contingencies, and I  
6 move it.

7

8           (Second.)

9

10          WILLIAM STRECK:       Moved and seconded. Discussion?  
11 Hearing none, those in favor, aye.

12

13          Aye.

14

15          Opposed? Thank you. The motion carries.

16

17          CHRIS BOOTH:    We have a certificate of amendment of the  
18 certificate of incorporation. North Country Children's Clinic,  
19 Inc. Change it's name to North Country Family Health Center,  
20 Inc., and amend the original certificate of incorporation to  
21 include additional purposes. Both the Department and the  
22 Committee recommend approval, and I move it.

23

24          (Second.)

25



1 WILLIAM STRECK: A motion and a second. Further  
2 discussion? Hearing none, those in favor aye.

3

4 Aye.

5

6 Opposed? Thank you. The motion carries.

7

8 CHRIS BOOTH: We have two applications for home health  
9 agency licenses. Number 2080L, (NICKS) JT corporation, d/b/a  
10 Comfort Keepers. Number 685 for Tompkins, Cortland, and  
11 Schuyler Counties, and application 2243L Washington County  
12 Public Health Nursing Service for Washington County. Dr. Ruge  
13 expressed an interest. Both those applications were recommended  
14 by the Department and the Committee for approval with a  
15 contingency and I move them.

16

17 (Second.)

18

19 WILLIAM STRECK: Moved and seconded. Discussion?  
20 Hearing none, those in favor aye.

21

22 Aye.

23

24 Opposed? Thank you. The motion carries.

25

1           CHRIS BOOTH:    Application 122311E, Endoscopy Center of  
2 Long Island at North Shore LIJ Ventures LLC as a member of the  
3 Endoscopy Center of Long Island, the sole member of North Shore  
4 LIJ Ventures LLC is North Shore University Hospital. Both the  
5 Department and the Committee recommend approval with  
6 contingencies, and I move it.

7

8           (Second.)

9

10          WILLIAM STRECK:    Motion and a second. Discussion?  
11 Hearing none, those in favor aye.

12

13          Aye.

14

15          Opposed? Thank you. The motion carries.

16

17          CHRIS BOOTH:    Application 112210B, New York Regional  
18 Services LLC d/b/a New York Regional Dialysis Center. Establish  
19 and construct a freestanding 24 station chronic renal dialysis  
20 center at 843 Lexington Avenue, Brooklyn. Interest declared by  
21 Dr. Bhat. The Department and the Committee recommends approval  
22 with conditions and contingencies, and I move it.

23

24          (second.)

25

1 WILLIAM STRECK: Moved and seconded. Discussion?

2 Hearing none, those in favor aye.

3

4 Aye.

5

6 Opposed? Thank you. The motion carries.

7

8 CHRIS BOOTH: Application 121266E, Guthrie Home Care.

9 Establish a certified home health agency to serve Tioga,

10 Steuben, and Chemung Counties. Interest declared by Mr. Booth.

11 Both the Department and the Committee recommend approval with a

12 condition and a contingency and I move it.

13

14 (Second.)

15

16 WILLIAM STRECK: Motion with a second. Discussion.

17 Hearing none, those in favor aye.

18

19 Aye.

20

21 Opposed? Thank you. The motion carries.

22

23 CHRIS BOOTH: Application 121233E, United Hebrew of New

24 Rochelle Certified Home Health Agency. Establish a certified

25 home health agency to serve Westchester County. Both the

1 Department and the Committee recommends approval with a  
2 condition and contingencies, and I move it.

3

4 (Second.)

5

6 WILLIAM STRECK: Motion with a second. Discussion?

7 Hearing none, those in favor aye.

8

9 Aye.

10

11 Opposed? Thank you. The motion carries.

12

13 CHRIS BOOTH: Three applications for home health agency  
14 licensures. 2007L, GTT Services, d/b/a Bright Star of North  
15 Shore Nassau County. Nassau and Suffolk Counties. Interest  
16 declared by Ms. Regan.

17 1788L, Sunrise Homecare Inc. Putnam, Westchester, and  
18 Dutchess Counties. Interest declared by Ms. Regan.

19 Both of those were recommended by the Department and the  
20 Committee for approval with a contingency.

21 2263L, Wyoming County Health Department, Wyoming County.  
22 Interest declared by Mr. Booth, Ms. Hines, and Mr. Robinson.

23 The Department and the Committee recommended approval and I move  
24 the group.

25

1 (Second.)

2

3 WILLIAM STRECK: A motion with a second. Discussion?

4 Hearing none, those in favor aye.

5

6 Aye.

7

8 Opposed? Thank you. The motion carries.

9

10 CHRIS BOOTH: Application 12231CE, BDRNC LLC, d/b/a Van  
11 Duyn Center for Rehabilitation and Nursing, Onondaga County.  
12 Establish Van Duyn Center for Rehabilitation and Nursing LLC as  
13 the new operator of Van Duyn Home and Hospital. The Department  
14 and the Committee both recommended approval with contingencies.  
15 There was one abstention at the Committee, and I move it.

16

17 (Second.)

18

19 WILLIAM STRECK: The motion and a second. Discussion?

20 Question.

21

22 ANGEL GUTIERREZ: I think you read the number wrong.

23

24 CHRIS BOOTH: OK. It was 122312E.

25

1 WILLIAM STRECK: You got the letters right, though, so.

2 OK.

3

4 CHRIS BOOTH: And the county.

5

6 WILLIAM STRECK: So we have a motion with a second. Is  
7 there any discussion? Those in favor aye.

8

9 Aye

10

11 Opposed? Abstentions? The motion carries.

12

13 CHRIS BOOTH: That concludes our report.

14

15 WILLIAM STRECK: Well, thank you for that scintillating  
16 committee report. I think this is obviously important work,  
17 requires our marching through some of these procedures, but  
18 thank you for that Chris.

19 Are there - we're being compared North Korean Parliament?

20 No, we're a step above that. So, we do not have a need today

21 for an executive session. Are there comments? Issues that any

22 members of the council would like to bring up before we move to

23 adjournment? Dr. Gutierrez? And the next meeting after

24 extensive and detailed planning has been secured in Rochester

25 New York. So, we do want to make note of that. And I beg your

1 pardon? Buffalo is always an aspiration. Any further comments  
2 or discussion? Dr. Berliner.

3

4 HOWARD BERLINER: We have the planning meeting is the day  
5 before the Committee meeting in Rochester also, right? So is  
6 there a preferred hotel or stuff like that? Are you guys going  
7 to work that out?

8

9 WILLIAM STRECK: OK. As we work out our travel details  
10 I would entertain a motion for adjournment. So moved.  
11 Seconded, thank you all for your contributions today.

12

13 [end of audio]

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

**August 1, 2013**

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**REGULATION**

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

**Exhibit #2**

Angel Gutiérrez, M.D., Chair

**For Emergency Adoption**

13-08 Amendment of Subpart 7-2 of Title 10 NYCRR - Children's Camps



## **SUMMARY OF EXPRESS TERMS**

The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying

- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

Pursuant to the authority vested in the Public Health and Health Planning Council by Section 225 of the Public Health Law, subject to the approval by the Commissioner of Health, Subpart 7-2 of the State Sanitary Code, as contained in Chapter 1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows, to be effective on June 30, 2013.

**SUBPART 7-2**

**Children's Camps**

**(Statutory Authority: Public Health Law §§ 201, 225, 1390, 1394, 1395, 1399-a;**

**L. 2012, ch. 501)**

Subdivision (o) of section 7-2.5 is amended to read as follows:

(o) The camp operator shall provide adequate supervision. *Adequate supervision* shall mean:

(1) supervision such that a camper is protected from any unreasonable risk to his or her health or safety, including physical or sexual abuse or any public health hazard; [and]

(2) as a minimum, there shall exist visual or verbal communications capabilities between camper and counselor during activities and a method of accounting for the camper's whereabouts at all times[.]; and

(3) at camps required to comply with section 7-2.25 of this Subpart, protection from any unreasonable risk of experiencing an occurrence which would constitute a reportable incident as defined in section 7-2.25(h)(4) of this Subpart.

Section 7-2.24 is amended to read as follows:

Variance; waiver.

(a) *Variance* - in order to allow time to comply with certain provisions of this Subpart, an operator may submit a written request to the permit-issuing official for a variance from a specific provision(s) when the health and safety of the children attending the camp and the public will not be prejudiced by the variance, and where there are practical difficulties or unnecessary hardships in immediate compliance with the provision. An operator must meet all terms of an approved variance(s) including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the permit-issuing official specifies. The permit-issuing official shall consult with the State Department of Health and shall obtain approval from the State Department of Health for the proposed decision, prior to granting or denying a variance request for requirements in section 7-2.25 of this Subpart.

(b) *Waiver* - in order to accept alternative arrangements that do not meet certain provisions of this Subpart but do protect the safety and health of the campers and the public, an operator may submit a written request to the permit-issuing official for a

waiver from a specific provision of this Subpart. Such request shall indicate justification that circumstances exist that are beyond the control of the operator, compliance with the provision would present unnecessary hardship and that the public and camper health and safety will not be endangered by granting such a waiver. The permit-issuing official shall consult with a representative of the State Department of Health prior to granting or denying a waiver request. An operator must meet all terms of an approved waiver(s), including the condition that it will remain in effect indefinitely unless revoked by the permit-issuing official or the facility changes operators. The permit-issuing official shall consult with the State Department of Health, and shall obtain the approval of the State Department of Health for the proposed decision, prior to granting or denying a waiver request related to the requirements in section 7-2.25 of this Subpart.

New subdivisions (h)-(m) of section 7-2.25 are added to read as follows:

(h) Definitions. The following definitions apply to Section 7-2.25 of this Subpart.

- (1) *Camp Staff* shall mean a director, operator, employee or volunteer of a children's camp; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a children's camp pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the children's camp.
- (2) *Department* shall mean the New York State Department of Health.

(3) *Justice Center* shall mean the Justice Center for the Protection of People with Special Needs, as established pursuant to Section 551 of the Executive Law.

(4) *Reportable Incident* shall include those actions incorporated within the definitions of “physical abuse,” “sexual abuse,” “psychological abuse,” “deliberate inappropriate use of restraints,” “use of aversive conditioning,” “obstruction of reports of reportable incidents,” “unlawful use or administration of a controlled substance,” “neglect,” and “significant incident” all as defined in Section 488 of the Social Services Law.

(i) Reporting.

(1) In addition to the reporting requirements of section 7-2.8(d), a camp operator subject to section 7-2.25 of this Subpart and all camp staff falling within the definition of “mandated reporter” under section 488 of the Social Services Law shall immediately report any reportable incident as defined in section 7-2.25(h)(4) of this Subpart and Section 488 of the Social Services Law, where such incident involves a camper with a developmental disability, to the permit-issuing official and to the Justice Center’s Vulnerable Persons’ Central Register. Such report shall be provided in a form and manner as required by the Justice Center.

(j) Employee Screening, Training, and Code of Conduct

(1) Prior to hiring anyone who will or may have direct contact with campers, or approving credentials for any camp staff, the operator shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's staff exclusion list, the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(1) of this Subpart.

(2) A camp operator must ensure that camp staff, and others falling within the definition of mandated reporter under Section 488 of the Social Services Law who will or may have direct contact with campers having a developmental disability, receive training regarding mandated reporting and their obligations as mandated reporters. A camp operator shall ensure that the telephone number for the Justice Center's hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to mandated reporters and campers.

(3) The camp operator shall ensure that all camp staff and others falling within the definition of "custodian" under Section 488 of the Social Services Law are

provided with a copy of the code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands such code of conduct.

(k) Disclosure of information

(1) Except to the extent otherwise prohibited by law, the camp operator shall be obliged to share information relevant to the investigation of any incident subject to the reporting requirements of this Subpart with the permit-issuing official, the State Department of Health, and the Justice Center. The permit-issuing official, the department and the Justice Center shall, when required by law, or when so directed by the department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of section 7-2.25 (i) of this Subpart.

(2) Except as otherwise prohibited by law, the operator of a camp not otherwise subject to Article Six of the Public Officers Law shall make records available for public inspection and copying to the extent required by subdivision six of Section 490 of the Social Services Law and regulations of the Justice Center.



(1) Incident Management.

(1) The camp operator shall cooperate fully with the investigation of reportable incidents involving campers with developmental disabilities and shall provide all necessary information and access to conduct the investigation. The camp operator shall promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability. The camp operator shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center and permit-issuing official upon request, in the form and manner requested. Such information must be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in this subdivision.

(2) Unless delegated by the Justice Center to a delegate investigatory agency as defined in subdivision seven of Section 488 of the Social Services Law, incidents of abuse or neglect, as defined in subdivision eleven of Section 488 of the Social Services Law, shall be investigated by the Justice Center. With regard to all other reportable incidents, as defined in Section 488 of the Social Services Law, the permit-issuing official shall initiate a prompt investigation of an allegation of a reportable incident, which shall commence no later than five business days after notification of such an incident, unless the Justice Center agrees that it will undertake such investigation. Additional time for completion of the investigation

may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. At a minimum, the investigation of any reportable incident shall comply with the following:

- (i) Investigations shall include a review of medical records and reports, witness interviews and statements, expert assessments, and the collection of physical evidence, observations and information from care providers and any other information that is relevant to the incident. Interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of other parties or witnesses or under circumstances in which other parties or witnesses may perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed. The procedures required by this Subparagraph (i) may be altered if, and only to the extent necessary to, comply with an applicable collective bargaining agreement.
- (ii) All evidence must be adequately protected and preserved.

(iii) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible under law or regulation, including but not limited to Article 11 of the Social Services Law.

(iv) Upon completion of the investigation, a written report shall be prepared which shall include all relevant findings and information obtained in the investigation and details of steps taken to investigate the incident. The results of the investigation shall be promptly reported to the department, if the investigation was not performed by the department, and to the Justice Center.

(v) If any remedial action is necessary, the permit-issuing official shall establish a plan in writing with the camp operator. The plan shall indicate the camp operator's agreement to the remediation and identify a follow-up date and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported, to the department and to the Justice Center.

(vi) The investigation and written report shall be completed and provided to the department and the Justice Center within 45 days of when the incident was first reported to the Justice Center. For purposes of this

section, “complete” shall mean that all necessary information has been obtained to determine whether and how the incident occurred, and to complete the findings referenced in paragraph (1)(2)(iv) of this subdivision.

- (3) (i) The camp shall maintain a facility incident review committee, composed of members of the governing body of the children’s camp and other persons identified by the camp operator, including some members of the following: camp administrative staff, direct support staff, licensed health care practitioners, service recipients, the permit-issuing official or designee and representatives of family, consumer and other advocacy organizations, but not the camp director. The camp operator shall convene a facility incident review panel to review the timeliness, thoroughness and appropriateness of the camp's responses to reportable incidents; recommend additional opportunities for improvement to the camp operator, if appropriate; review incident trends and patterns concerning reportable incidents; and make recommendations to the camp operator to assist in reducing reportable incidents. The facility incident review panel shall meet at least annually, and also within two weeks of the completion of a written report and remedial plan for a reportable incident.
- (ii) Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and regulations of the Justice Center, a camp operator may seek an

exemption from the requirement to establish and maintain an incident review committee. In order to obtain an exemption, the camp operator must file an application with the permit-issuing official, at least sixty days prior to the start of the camp operating season, or at any time in the case of exemptions sought within the first three months following the effective date of this provision. The application must provide sufficient documentation and information to demonstrate that that compliance would present undue hardship and that granting an exemption would not create an undue risk of harm to campers' health and safety. The permit-issuing official shall consult with the State Department of Health (department), and shall not grant or deny an application for an exemption unless it first obtains department approval for the proposed decision. An operator must meet all terms of an approved exemption(s), including the condition that it will remain in effect for one year unless revoked by the permit-issuing official, subject to department approval, or the facility changes operators. Any application for renewal shall be made within 60 days prior to the start of the camp's operating season. The procedure set forth in this Subparagraph (ii) shall be used instead of the general procedures set forth in section 7-2.24 of this Subpart.

(m) In addition to the requirements specified by subdivisions (d) and (g) of section 7-2.4 of this Subpart, a permit may be denied, revoked, or suspended if the children's camp fails to comply with regulations, policies, or other requirements of the Justice Center. In

considering whether to issue a permit to a children's camp, the permit-issuing official shall consider the children's camp's past and current compliance with the regulations, policies, or other requirements of the Justice Center.

## **Regulatory Impact Statement**

### **Statutory Authority:**

The Public Health and Health Planning Council is authorized by Section 225(4) 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. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

### **Legislative Objectives:**

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

## **Needs and Benefits:**

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on



that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.

- required that children’s camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children’s camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

**Compliance Costs:**

**Cost to Regulated Parties:**

The amendments impose additional requirements on children’s camp operators for reporting and cooperating with Department of Health investigations at children’s camps for children with developmental disabilities (hereafter “camps”). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children’s camps for children with developmental disabilities operate each year, with combined reports of zero to two

incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of “custodian” under section 488 of the Social Services Law (collectively “employees”) are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs

associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment,

should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

**Cost to State and Local Government:**

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

**Cost to the Department of Health:**

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be

distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

**Local Government Mandates:**

Children’s camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the “Cost to Regulated Parties” section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the “Cost to State and Local Government” section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

**Paperwork:**

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

**Duplication:**

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is expected to be consistent with a regulation expected to be promulgated by the Justice Center.

**Alternatives Considered:**

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

**Federal Standards:**

Currently, no federal law governs the operation of children's camps.

**Compliance Schedule:**

The proposed amendments are to be effective on June 30, 2013.

**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 Business and Local Government**

**Types and Estimated Number of Small Businesses and Local Governments:**

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

**Compliance Requirements:**

**Reporting and Recordkeeping:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

**Other Affirmative Acts:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” “Local Government Mandates,” and “Paperwork” sections of the Regulatory Impact Statement.

**Professional Services:**

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

**Compliance Costs:****Cost to Regulated Parties:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

**Cost to State and Local Government:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the

“Cost to Regulated Parties” section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in “Cost to State and Local Government” and “Local Government Mandates” portions of the Regulatory Impact Statement.

**Economic and Technological Feasibility:**

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

**Minimizing Adverse Economic Impact:**

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department’s ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

**Small Business Participation and Local Government Participation:**

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

## **Rural Area Flexibility Analysis**

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

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

### **Reporting and Recordkeeping and Other Compliance Requirements:**

#### **Reporting and Recordkeeping:**

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

#### **Other Compliance Requirements:**

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

**Professional Services:**

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

**Compliance Costs:****Cost to Regulated Parties:**

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

**Economic and Technological Feasibility:**

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

**Minimizing Adverse Economic Impact on Rural Area:**

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

**Rural Area Participation:**

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

## **Job Impact Statement**

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.



## **Emergency Justification**

Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs (“Justice Center”), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a “state oversight agency.” These regulations will assure proper coordination with the efforts of the Justice Center, which will be operational after June 30, 2013.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps during the upcoming camp season. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2014 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal

rulemaking process which will also occur pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent

emergency adoption, these benefits and protections will not be available to campers with special needs for the upcoming camp season, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

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

**August 1, 2013**

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

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

**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.	131217 C	Saratoga Hospital (Saratoga County)	Contingent Approval



# Public Health and Health Planning Council

Project # 131217 C  
**Saratoga Hospital**

**County: Saratoga County**  
**Purpose: Construction**

**Program: Hospital**  
**Submitted: April 17, 2013**

## Executive Summary

### Description

Saratoga Hospital, a 171-bed not-for-profit hospital located in Saratoga County, requests approval to replace and modernize all seven operating rooms and expand the total number of operating rooms to ten. Implementation of this plan will require that Saratoga Hospital create new space by expanding the hospital's overall footprint to accommodate the proposed ORs, the Post Anesthesia Care Unit, and the pre-operative and post-operative care areas. Also, the hospital proposes to replace and modernize the current Intensive Care/ Critical Care Unit (ICCU). This will include renovation of the existing shell space that was created above the Emergency Department (ED) during the ED expansion project in 2008-2009. The space currently occupied by the ICCU will become part of the renovations to accommodate the new OR suite.

It is anticipated that the project will be completed in phases, with the first phase involving fitting up of the shell space above the ED so that the ICCU can be relocated. Demolition, construction and renovation will be completed in subsequent phases with no disruption in surgical services. In addition to challenges posed by the inadequate physical space, the demand for surgery procedures at Saratoga Hospital is increasing.

**DOH Recommendation**  
Contingent approval.

### Need Summary

Saratoga Hospital seeks approval to replace and modernize its existing operating rooms, its intensive care unit, and to add three net new ORs to become more efficient and meet industry standards. Saratoga Hospital performed 10,523 inpatient and outpatient surgeries in 2011 and 10,096 in 2012, exceeding the general norm of 800 to 1200 procedures per OR. This

project will allow Saratoga Hospital to operate within the planning optimum for surgery. The current ICU/CCU beds will be modernized to support patients in need of critical care.

### Program Summary

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

### Financial Summary

Total project cost of \$33,913,723 will be met as follows: Equity of \$7,183,723 and a tax exempt loan of \$26,730,000 at an interest rate of a 4% for a 25 year term.

### Budget:

Revenues	\$10,479,799
Expenses	<u>10,215,743</u>
Excess of Revenues over Expenses	\$264,056

Subject to the noted contingency, the incremental loss in year one will be offset through operations, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

## Recommendations

Health Systems Agency  
There will be no HSA review of this project.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable to the Department of Health. This is to be provided within 120 days of receipt from the Department of Health, Bureau of Architectural and Engineering Facility Planning of approval of final plans and specifications and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01 [AER].

**Approval conditional upon:**

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

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

Saratoga Hospital is a 171-bed acute care facility located at 211 Church Street, Saratoga Springs, 12866, in Saratoga County. The facility seeks approval to replace and modernize all seven (7) of its operating rooms (ORs), and its intensive care unit, and add three (3) net new ORs.

### Saratoga Hospital

State designated:

- Level 1 Perinatal Center.

Saratoga Hospital operates ten (10) extension clinics that are authorized to provide an array of healthcare services in the following areas: Ballston Spa, Galway, Malta, Saratoga Springs and Schuylerville. These clinics provide outpatient services that include primary medical care O/P, nutritional O/P, radiology - diagnostic O/P, clinical laboratory service O/P, CT scanner, magnetic resonance imaging, therapy - occupational O/P, therapy - physical O/P, podiatry O/P, ambulatory surgery - multi speciality, prenatal O/P, therapy - speech language pathology O/P, audiology O/P and psychology O/P.

Saratoga Hospital is the sole acute care hospital in Saratoga County. In 2011 and 2012, the hospital averaged 9,399 total inpatient discharges. The majority of these discharges originated from Saratoga and Washington Counties. In 2000, the combined census of these counties was 261,677 residents. By the 2010 census, the combined census for the two-county area increased by 8.1 percent, to 282,823. By 2020, the combined population for the service area is projected to reach 294,963 residents.

SPARCS inpatient and outpatient surgical cases at the hospital show 10,523 cases 2011 and 10,096 in 2012. Based on the general norm of 800 to 1,200 surgical cases per OR per year, Saratoga Hospital's request for 10 operating rooms will allow the hospital to operate within the norm. A review of the hospital's Institutional Cost Reports for 2010 and 2011 showed that its critical care unit operated at 79.0 percent occupancy during those years.

Based on the hospital's current utilization and the need to modernize its existing surgical rooms and ICU/CCU suite, the request is supported.

### Conclusion

This project will enable Saratoga Hospital to operate within the planning optimum of 800 to 1200 surgical cases per OR per year through the addition of three new ORs and the modernization of its existing seven ORs. The project will also update the ICU/CCU area. The changes will enable the hospital to accommodate growing surgical and ICU/CCU volume as the population of the hospital's service area continues to experience rapid growth.

### Recommendation

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

## Programmatic Analysis

### Program Description

Saratoga Hospital requests approval to replace and modernize all seven (7) operating rooms (ORs) and expand its total number of ORs to ten (10). The construction project will include creation of new space and renovation of existing space to accommodate the proposed ORs, Post Anesthesia Care Unit, and pre- and post-operative care areas. Shell space (previously created above the Emergency Department during an expansion project in 2008-2009) will be renovated to replace and modernize the current Intensive Care/Critical Care Unit (ICCU). The space currently occupied by the ICCU will be part of the renovations to accommodate the new OR suite. The project will be completed in phases, the first being the fitting up of the shell space above the ED to relocate the ICCU. Subsequent phases of demolition,

construction and renovation, will be completed in a manner that ensures no disruption in surgical services.

Staffing will consist of 51.5 FTEs, including registered nurses, technicians and administrative staff. Staffing is expected to increase to 57.3 FTEs by the third year of operation.

#### Compliance with Applicable Codes, Rules and Regulations

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

#### Recommendation

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

## Financial Analysis

#### Total Project Cost and Financing

Total project cost, which is for new construction, renovations and the acquisition of moveable equipment, is estimated at \$33,913,723 further itemized as follows:

New Construction	\$15,409,795
Renovation and Demolition	2,247,330
Design Contingency	1,805,441
Construction Contingency	902,721
Architect/Engineering Fees	1,225,000
Construction Manager Fees	397,285
Other Fees (Consultant)	330,000
Moveable Equipment	7,690,000
Telecommunications	1,000,000
Financing Costs	922,145
Interim Interest Expense	1,807,477
CON Fees	2,000
Additional Processing Fee	<u>174,529</u>
Total Project Cost	\$33,913,723

Project costs are based on an October 31, 2013 construction start date and a twenty-two month construction period.

The Bureau of Architectural and Engineering Facility Planning has determined that this project includes shell space costs of \$2,004,752. As a result, the total approved project cost for reimbursement purposes shall be limited to \$31,908,971.

The applicant's financing plan appears as follows:

Equity	\$7,183,723
Tax Exempt Loan via Saratoga County Capital	26,730,000
Resource Corporation (4.00% interest rate for 25 year term)	



## Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,489,113	\$10,479,700
Expenses:		
Operating	\$5,359,531	\$6,977,738
Capital	<u>2,161,782</u>	<u>3,238,005</u>
Total Expenses	\$7,521,313	\$10,215,743
Excess of Revenues over Expenses	(\$1,032,200)	\$263,957
Utilization:		
Inpatient (discharges)	339	500
Outpatient (visits)	428	843

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

<u>Inpatient</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	10.67%	10.70%
Medicare Fee-For-Service	41.28%	41.32%
Medicare Managed Care	21.90%	21.88%
Commercial Fee-For-Service	2.19%	2.18%
Commercial Managed Care	18.91%	18.90%
Private Pay	1.80%	1.86%
Other	3.25%	3.16%
<u>Outpatient</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	5.84%	5.93%
Medicare Fee-for-Service	14.95%	14.94%
Medicare Managed Care	6.07%	6.04%
Commercial Fee-for-Service	10.04%	9.96%
Commercial Managed Care	54.90%	55.04%
Private Pay	4.90%	4.98%
Other	3.30%	3.11%

The applicant has indicated that "Other" is for the following categories: Champus; Hospice; No Fault and Workers Compensation. Expense and utilization assumptions are based on the hospital's historical experience.

## Capability and Feasibility

The applicant will finance \$26,730,000 at an interest rate of 4.00% for a 25 year term via the Saratoga County Capital Resource Corporation. The remainder, \$7,183,723 will be met via accumulated funds from the hospital. Presented as BFA Attachment A are the 2011 and 2012 certified financial statements of Saratoga Hospital, which indicates the availability of sufficient funds for the equity contribution. As mentioned in the previous section, the total reimbursable project cost is \$31,908,971.

The submitted incremental budget projects an excess of revenues over expenses of (\$1,032,000) and \$263,957 during the first and third years, respectively. The first year loss will be offset from operations. Revenues reflect current reimbursement methodologies.

As shown on Attachment A, the hospital had an average positive working capital position and an average positive net asset position from 2011 through 2012. As shown, the hospital achieved an average excess of revenues over expenses of \$15,810,678 from 2011 through 2012.

Presented as BFA Attachment B, is the April 30, 2013 internal financial statements of Saratoga Hospital. As shown on Attachment B, the hospital had a positive working capital position and a positive net asset position through April 30, 2013. Also, the hospital achieved an excess of revenues over expenses of \$4,697,789 through April 30, 2013.

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

Recommendation

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

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## Attachments

BFA Attachment A	2011 and 2012 certified financial statements of Saratoga Hospital
BFA Attachment B	April 30, 2013 internal financial statements of Saratoga Hospital.
BHFP Attachment	Map

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

**August 1, 2013**

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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 #4**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	131207 C	Long Island Jewish Medical Center (Queens County) Mr. Kraut – Recusal Dr. Sullivan – Abstain/Interest	Contingent Approval

**Hospice Services – Construction**

**Exhibit #5**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	131211 C	High Peaks Hospice and Palliative Care, Inc. (Franklin County) Mr. Booth – Interest Dr. Ruge - Interest	Approval
2.	131252 C	The Community Hospice Inc. (Rensselaer County) Dr. Ruge - Interest	Approval

**Upstate Request for Applications – Certified Home Health Agencies –  
Construction**

**Exhibit #6**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121239 C	Visiting Nurse Service of Rochester and Monroe County (Monroe County) Mr. Booth – Recusal Ms. Hines – Recusal Mr. Robinson - Recusal	Approval
2.	121245 C	Lourdes at Home (Broome County) Mr. Booth - Interest	Approval



# Public Health and Health Planning Council

Project # 131207 C  
**Long Island Jewish Medical Center**

**County: Queens County**  
**Purpose: Construction**

**Program: Hospital**  
**Submitted: April 10, 2013**

## Executive Summary

### Description

Long Island Jewish Medical Center (LIJMC), a 983-bed not-for-profit hospital in New Hyde Park, requests approval to expand the Center for Advanced Medicine (CFAM) extension clinic, certify two new services, along with four (4) LINACS relocated from other facilities, and one new CT simulator. This application amends and supercedes 082086. LIJMC intends to reallocate and redistribute the services within the same Article 28 network at the proposed extension clinic. The major elements of the program include:

- Four existing linear accelerators or their replacements, one a gamma knife, will be added to the CFAM operating certificate. Two linear accelerators are being transferred from North Shore University Hospital (NSUH) and two from LIJMC.
- One CT devoted to treatment simulation
- Support and ancillary space.

The therapeutic radiology program will be located adjacent to CFAM's medical oncology program to provide a comprehensive continuum of cancer services, convenient and accessible to patients. The proposed therapeutic radiology program will create a centralized one-stop care model for cancer patients and their families.

DOH Recommendation  
Contingent approval

### Need Summary

Long Island Jewish Medical Center seeks approval to expand the Center for Advanced Medicine (CFAM) located at 450 Lakeville Road, Lake Success, 11042,

in Nassau County. Currently, the patients in need of outpatient cancer services receive oncology services

on the campuses of Long Island Jewish Medical Center and North Shore University Hospital (NSUH) in the radiation oncology departments. There will be no overall increase in certified radiation oncology capacity. Combined, the two hospitals had 72,484 visits to their chemotherapy clinics in 2011 and performed 25,948 outpatient therapeutic radiology treatments in 2012.

### Program Summary

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

### Financial Summary

Project costs will be met with \$44,650,855 in Dormitory Authority Bond financing and \$4,961,206 in cash.

Budget:	Revenues:	\$26,253,000
	Expenses:	<u>\$26,111,300</u>
	Gain:	\$ 141,700

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

## Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

**Approval contingent upon:**

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

**Approval conditional upon:**

1. This project is approved to be initially funded with North Shore - Long Island Jewish Hospital (NS-LIJ) obligated group equity with the prospect that the project will be 90.0% percent financed as part of a future NS-LIJ obligated group tax exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% percent interest rate and a 30 year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
2. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
3. The applicant shall complete construction by August 31, 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

**August 1, 2013.**

# Need Analysis

## Background

Long Island Jewish Medical Center (LIJMC) is a 983-bed acute care hospital located at 270-05 76th Ave, New Hyde Park, 11040, in Queens County. The hospital seeks approval to expand the Center for Advanced Medicine (CFAM) extension clinic, certify additional services, relocate four (4) LINACS from two acute care facilities to CFAM and add one (1) new CT simulator. This project amends and supercedes CON 082086.

## Analysis

### Long Island Jewish Medical Center

State designations:

- Regional Pediatric Trauma Center;
- Regional Perinatal Center; and
- Stroke Center.

### North Shore University Hospital

State designations:

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

Combined, LIJMC and NSUH have a total of 1,787 inpatient hospital beds. The hospitals' primary service areas are Nassau, Queens and Suffolk Counties. In 2011 and 2012, more than 95 percent of their inpatient discharges originated in the aforementioned counties. The combined census for these three counties was 4,983,292 residents in 2000; by the 2010 census period, the population of the aforementioned counties increased by 1.6 percent, to 5,063,604 residents, and is projected to reach 5,188,795 by 2020.

In 2011, the hospitals' combined discharges totaled 103,941. By 2012, these discharges increased by 1.4 percent to 105,356. Patient visits to the hospitals' chemo therapy clinic increased by 7.7 percent, from 67,328 visits in 2010 to 72,484 in 2011. The two hospitals' LINAC programs performed 25,948 outpatient therapeutic radiology treatments in 2012 (includes curative and palliative).

Both LIJMC and NSUH will retain therapeutic radiology as a service on their respective operating certificates. This proposal does not increase therapeutic radiology capacity in the service area but redistributes it and consolidates equipment and services to meet the outpatient needs of the patients that utilize LIJMC and NSUH oncology services.

The LINACS to be certified at the Center for Advanced Medicine are located on Long Island Jewish Medical and North Shore University Hospital campuses. The distribution of LIJMC and NSUH LINAC resources, one of which will be a gamma knife, that will be relocated to the CFAM and the hospitals will be as follows:

Distribution of LINACS: Long Island Jewish Medical Center, North Shore University Hospital and Center for Advanced Medicine		
Facility	Current LINACS	Proposed LINACS
Long Island Jewish Medical Center	4	2
North Shore University Hospital	3	1
Center for Advanced Medicine	0	4
Total	7	7

LIJMC states that the LINAC's that have reached 100 percent of their useful life will be replaced during the relocation to the Center for Advanced Medicine. The LINACs remaining at the hospitals will be used to accommodate inpatient needs at LIJMC and NSUH. The proposed CFAM therapeutic radiology (Radiology Oncology) program will be located adjacent to the existing outpatient cancer program at CFAM, the Monter Cancer Center. This will enrich the comprehensive continuum of ambulatory oncology services provided by LIJMC and NSUH.

#### Conclusion

This project will combine the outpatient oncology services of Long Island Jewish Medical Center and North Shore University Hospital into one location, the Center for Advanced Medicine, to provide a continuum of care for patients needing outpatient services.

#### Recommendation

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

## Programmatic Analysis

#### Background

Long Island Jewish Medical Center (LIJMC) requests approval to expand the Center for Advanced Medicine (CFAM) extension clinic, certify additional services and relocate four (4) LINACS (Amends and Supercedes 082086). LIJMC proposes to add a CT scanner, linear accelerator, therapeutic nuclear medicine, and diagnostic and therapeutic radiology services to their CFAM operating certificate. These services will support the 4 LINACS, one of which is a gamma knife, as well as HDR brachytherapies.

First year staffing will consist of 79.4 FTEs, including registered nurses and technicians, and is expected to increase to 80.4 FTEs by the third year of operation.

#### Compliance with Applicable Codes, Rules and Regulations

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

#### Recommendation

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



## Financial Analysis

### Total Project Cost and Financing

Total project costs for renovations and movable equipment are estimated at \$49,612,061, detailed as follows:

Renovation & Demolition	\$18,681,024
Design Contingency	934,051
Construction Contingency	1,166,854
Planning Consultant Fees	560,431
Architect/Engineering Fees	1,494,482
Other Fees (Consultant)	934,051
Construction Manager Fees	485,767
NYS DEC VOC Monitoring	1,173,263
Moveable Equipment	21,539,446
Financing Costs	2,369,329
CON Application Fee	2,000
CON Additional Processing Fees	<u>271,363</u>
Total Project Cost	\$ 49,612,061

Total project costs are based on a construction start date of November 1, 2013. The applicant's financing plan appears as follows:

Cash	\$4,961,206
Tax-Exempt Bonds, Dormitory Authority of the State of New York, 6.5%, 30 years	\$44,650,855

The Bureau of Architectural and Engineering Facility Planning has determined that the total approved project cost for reimbursement purposes shall be \$49,612,061. DOH staff has noted that CON additional processing fees of \$160,689 have previously been paid under amended and superceded CON 082086. Therefore, LIJMC will only be required to pay \$110,674 in CON additional processing fees.

Due to the strategic importance of initiating this project, the Hospital plans to initially fund total project cost with NS-LIJ Obligated Group equity. During construction, the project will be financed with interim financing, through a bank line of credit. A letter of interest has been submitted by the applicant from The Bank of America. This approach allows NS-LIJ to incur the interest expense only on actual funds drawn down from the interim financing. However, the project will be ultimately financed as part of a future NS-LIJ Obligated Group tax-exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30-year term. The Department will have the opportunity to review the final financing proposal in advance and work with facility staff to ensure that it meets approval standards.

### Operating Budget

The applicant has provided first and third year budgets in 2013 dollars, summarized below:

	<u>Year One</u>	<u>Year Three</u>
<b>Revenues:</b>		
Total Outpatient Revenues	\$25,457,400	\$26,253,000
<b>Expenses:</b>		
Operating	\$16,261,200	\$16,651,300
Capital	<u>9,210,000</u>	<u>9,460,000</u>
Total Expenses	\$25,471,200	\$26,111,300
Excess(Loss) of Revenue over Expenses	\$ (13,800)	\$141,700

Outpatient utilization by payor source for years one and three is anticipated as follows:

	<u>Year One and Three</u>
Medicaid Managed Care	11.0%
Medicare Fee-for-Service	25.0%
Medicare Managed Care	12.0%
Commercial Fee-for-Service	50.0%
Private Pay	2.0%

Expense and utilization assumptions are based on the historical operations of Long Island Jewish Medical Center and North Shore University Hospital, as well as market trends.

#### Capability and Feasibility

Total project cost will be funded through Dormitory Authority bonds at stated terms, with the remaining \$4,961,206 as equity from the hospital. Presented as BFA Attachment B, is the financial summary of Long Island Jewish Medical Center, which indicates the availability of sufficient resources for this project.

The hospital's financial projections indicate positive income will be achieved during the period. As shown on BFA Attachment B, the hospital has maintained positive working capital and net asset position, and generated an annual net loss of \$4,995,000 during 2012. The operational loss was due to infrastructure investments that were made at the facility, causing depreciation and interest impacts to the expenses of the operations, but is absorbed through the North Shore Long Island Jewish Health System, Inc.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary, North Shore-Long Island Jewish Health System, Inc. and Obligated Group
BFA Attachment C	Summary of Detailed Budgets-Cost Analysis
DHFP Attachment	Map



# Public Health and Health Planning Council

## Project # 131211 C High Peaks Hospice and Palliative Care, Inc.

**County:** Franklin County  
**Purpose:** Construction

**Program:** Hospice  
**Submitted:** April 16, 2013

### Executive Summary

#### Description

High Peaks Hospice and Palliative Care, Inc. is a not-for-profit hospice provider currently serving 5 North Country counties: Warren, Essex, Franklin, Hamilton and St. Lawrence. Currently, in Washington County, hospice services are provided by Washington County Hospice. Over the past several months, due to staff reductions, the census of hospice patients has been capped at 10 by Washington County Hospice. The Community Hospice and High Peaks Hospice and Palliative Care, Inc. have been receiving referrals, from Washington County Hospice to meet the gap in service need. Additionally, Washington County has communicated their intent to close the program. Through this application the applicant proposes to expand hospice service into Washington County.

#### DOH Recommendation Approval

#### Need Summary

With the closure of the only hospice service in Washington County, approval of this application will help ensure continued access to hospice care by Washington County residents.

#### Program Summary

Washington County Public Health Nursing Service, which currently operates the only Article 40 hospice certified to provide hospice services to Washington County residents, has submitted a closure plan with a tentative closure date of September 30, 2013. The current proposal from High Peaks Hospice and Palliative Care, Inc., seeks approval to add Washington County to their approved geographic service area.

#### Financial Summary

There are no project costs associated with this application.

#### Year Three Incremental Budget

Revenues:	\$868,481
Expenses:	<u>950,973</u>
Net Operating Income:	(\$ 82,492)
Additional Income (Community Support & Fundraising)	\$ 96,000
Net Income:	<u>\$ 13,508</u>

With the anticipated community support and fundraising, 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 review of this project.

Office of Health Systems Management

**Approval conditional upon:**

1. The project must be completed within one year of the approval letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the project by the applicant and an expiration of the approval.

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

The Washington County Public Health Nursing Service's closure plan for its Article 40 hospice is predicated on the approval of alternate hospice providers to serve Washington County hospice patients, and on the associated successful transfer of all Washington County hospice patients to those approved providers. This closure plan was accepted and approved by NYSDOH in a letter dated April 12, 2013.

When requested by the Department and the Washington County Public Health Nursing Service, High Peaks Hospice and Palliative Care, Inc., along with Community Hospice Inc., has been providing hospice services to Washington County residents on an as needed, case-by-case basis. As providers in two counties contiguous to Washington County, the two hospice agencies are providing up to 50% - 60% of the needed hospice care services in Washington County, and both have established relationships with the referral sources and related agencies serving Washington County. Both hospice agencies seek to build on this arrangement in making permanent their services in Washington County once the hospice operated by the Washington County PHNS is closed.

In their respective applications, each applicant proposes an identical collaborative plan developed between the two hospice providers to share their service responsibilities to Washington County. Each will concentrate their provision of hospice services within the geographic area of Washington County that is adjacent to their current geographic service area, with the other providing any and all necessary back-up whenever needed, thus ensuring that the entire county is served at all times.

### Conclusion

In the absence of other applicants to serve Washington County and in view of the proposed collaborative arrangement between the two hospices and their established connections with referral sources and related agencies in the jurisdiction, approval of this application would help ensure continued access to hospice care by the residents of Washington County.

### Recommendation

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

## Programmatic Analysis

### Program Description

High Peaks Hospice and Palliative Care, Inc. (High Peaks), is a not-for-profit voluntary corporation which operates an Article 40 Hospice. High Peaks is currently approved to serve Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, from its main parent office practice location in Saranac Lake (Franklin County), and approved satellite office additional practice locations in Saranac Lake (Franklin County), Mineville (Essex County), and Queensbury (Warren County). The current proposal seeks approval to add Washington County to the approved geographic service area of High Peaks.

High Peaks projects an increased caseload of 150 patients in Washington County for the first year, with a third year projected caseload of 215 patients. High Peaks plans to serve Washington County out of its current satellite office additional practice location in Queensbury (Warren County).

Washington County Public Health Nursing Service currently operates the only Article 40 hospice certified to provide hospice services to Washington County residents. The County officially notified the NYSDOH that it planned to close the County-run hospice, and submitted the required closure plan to the Department. The County's closure plan projects a tentative closure date of September 30, 2013, which would be dependent on the formal approval and initial operations of alternate hospice providers to serve Washington County hospice patients, and pending the successful transfer of all Washington County

hospice patients to the approved alternate hospice providers. This closure plan was accepted and approved by NYSDOH by letter dated April 12, 2013.

Due to the County's ongoing difficulties in providing services to all the Washington County patients needing hospice care, Article 40 hospice providers serving contiguous counties have been requested to provide services to Washington County patients, as needed, on a case by case basis. Both High Peaks and The Community Hospice, Inc. have been successfully providing such services when requested. Currently, the two hospice agencies are providing up to 50% - 60% of the needed hospice care services in Washington County, and both have established relationships with the referral sources and related agencies serving Washington County.

Once the County submitted its official closure plan, and with no other hospice providers having official approval to serve Washington County, both High Peaks and The Community Hospice, Inc. submitted formal CON applications requesting official approval to expand their approved geographic service areas into Washington County. Although both applicants agree to be responsible to assure service to the entire county at all times, each of their applications outline an identical collaborative plan, developed between the two hospice providers, to share their service responsibilities within Washington County. Each will concentrate their provision of hospice services within the geographic area of Washington County that is adjacent to their current geographic service area, with the other providing any and all necessary back-up whenever needed, thus assuring the entire county is being served at all times. In addition, each of these two hospice providers will serve Washington County from its existing approved satellite office located in a county that directly borders Washington County.

High Peaks Hospice and Palliative Care, Inc. 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 incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare	\$491,253	\$758,991
Medicaid	29,975	46,388
Commercial	40,419	62,481
Other	<u>300</u>	<u>618</u>
Total Revenues:	<u>\$561,947</u>	<u>\$868,478</u>
Expenses:	<u>\$672,415</u>	<u>\$950,973</u>
Net Operating Income:	(\$110,468)	(\$82,492)
Additional Income (Community Support & Fundraising)	104,900	96,000
Net Income:	<u>(\$ 5,568)</u>	<u>\$13,508</u>
Caseload:	150	215

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

	<u>Year One</u>	<u>Year Three</u>
Medicare	98%	96%
Medicaid	0%	1%
Other and Commercial	2%	3%

Expense and utilization assumptions are based on applicant's historical experiences.

#### Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$112,069, which appears reasonable based on two months of first year expenses, and will be satisfied from accumulated funds. BFA Attachment A indicates the availability of sufficient funds to provide the working capital.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The applicant's budget projects operating income of (\$110,468) and (\$82,492) during the first and third year, respectively. Revenues are based on current reimbursement methodologies for hospice services. The applicant indicates they have historically successfully achieved fundraising targets. The applicant indicates fundraising budgets of \$104,900 and \$96,000, year one and three, are realistic projections based upon their fundraising history. Therefore, the applicant's total budget indicates net revenue of (\$5,568) and \$13,508 during the first and third years of operation. The budget appears reasonable.

BFA Attachment A is the 2012 and 2011 certified financial statements of High Peaks Hospice and Palliative Care, Inc.

As shown, the applicant had an average positive working capital and an average positive net asset position. They experienced an average net loss of \$602,781 during this period.

The applicant indicates that the losses resulted from volume lower than clinical staffing levels necessitated. In the fall of 2012, the applicant initiated a number of cost cutting measures. These included reductions in FTE's, as well as efforts to reduce medication and transportation expenses.

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, 2012 and 2011 - High Peaks Hospice and Palliative Care, Inc.



# Public Health and Health Planning Council

Project # 131252 C  
**The Community Hospice, Inc.**

**County:** Rensselaer County  
**Purpose:** Construction

**Program:** Hospice  
**Submitted:** May 2, 2013

## Executive Summary

### Description

The Community Hospice, Inc. is a not-for-profit hospice provider currently serving Albany, Columbia, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie Counties. Currently, in Washington County, hospice services are provided by Washington County Hospice. Over the past several months, due to staff reductions, the census of hospice patients has been capped at 10 by Washington County Hospice. The Community Hospice, Inc. and High Peaks Hospice and Palliative Care, Inc. have been receiving referrals from Washington County Hospice to meet the gap in service need. Additionally, Washington County has communicated their intent to close the program. The Community Hospice, Inc. is a member of St Peter's Health Partners. Through this application, the applicant proposes to expand hospice service into Washington County.

### Financial Summary

There are no project costs associated with this application.

#### Year Three Incremental Budget

Revenues:	\$801,144
Expenses:	<u>647,582</u>
Net Income:	\$153,562

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

### DOH Recommendation

Approval

### Need Summary

With the closure of the only hospice service in Washington County, approval of this application will help ensure continued access to hospice care by Washington County residents.

### Program Summary

Washington County Public Health Nursing Service, which currently operates the only Article 40 hospice certified to provide hospice services to Washington County residents, has submitted a closure plan with a tentative closure date of September 30, 2013. The current proposal from The Community Hospice, Inc., seeks approval to add Washington County to their approved geographic service.



## Recommendations

Health Systems Agency  
There will be no HSA review of this project.

Office of Health Systems Management

**Approval conditional upon:**

1. The project must be completed within one year of the approval letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the project by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

The Washington County Public Health Nursing Service's closure plan for its Article 40 hospice is predicated on the approval of alternate hospice providers to serve Washington County hospice patients, and on the associated successful transfer of all Washington County hospice patients to those approved providers. This closure plan was accepted and approved by NYSDOH in a letter dated April 12, 2013.

When requested by the Department and the Washington County Public Health Nursing Service, The Community Hospice Inc. (Community Hospice) along with High Peaks Hospice and Palliative Care, Inc. (High Peaks), has been providing hospice services to Washington County residents on a as needed, case-by-case basis. As providers in two counties contiguous to Washington County, the two hospice agencies are providing up to 50% - 60% of the needed hospice care services in Washington County, and both have established relationships with the referral sources and related agencies serving Washington County. Both hospice agencies seek to build on this arrangement in making permanent their services in Washington County once the hospice operated by the Washington County PHNS is closed.

In their respective applications each applicant proposes an identical collaborative plan developed between the two hospice providers to share their service responsibilities to Washington County. Each will concentrate their provision of hospice services within the geographic area of Washington County that is adjacent to their current geographic service area, with the other providing any and all necessary back-up whenever needed, thus ensuring that the entire county is served at all times.

### Conclusion

In the absence of other applicants to serve Washington County and in view of the proposed collaborative arrangement between the two hospices and their established connections with referral sources and related agencies in the jurisdiction, approval of this application would help ensure continued access to hospice care by the residents of Washington County.

### Recommendation

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

## Programmatic Analysis

### Program Description

The Community Hospice, Inc., is a not-for-profit voluntary corporation which operates an Article 40 Hospice. Community Hospice is currently approved to serve Albany, Columbia, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie Counties, from its main parent office practice location in Rensselaer (Rensselaer County), and approved satellite office additional practice locations in Albany (Albany County), Amsterdam (Montgomery County), Catskill (Greene County), Saratoga Springs (Saratoga County), and Schenectady (Schenectady County). Community Hospice also operates its own 10-bed hospice inpatient unit in leased space at St. Peter's Hospital in Albany. The current proposal seeks approval to add Washington County to the approved geographic service area of Community Hospice.

Community Hospice projects an increased caseload of 42 patients in Washington County for the first year, with a third year projected caseload of 91 patients. Community Hospice plans to serve Washington County out of its current satellite office additional practice location in Saratoga Springs (Saratoga County).

Washington County Public Health Nursing Service currently operates the only Article 40 hospice certified to provide hospice services to Washington County residents. The County officially notified the NYSDOH that it planned to close the County-run hospice, and submitted the required closure plan to the Department. The County's closure plan projects a tentative closure date of September 30, 2013, which would be dependent on the formal approval and initial operations of alternate hospice providers to serve Washington County hospice patients, and pending the successful transfer of all Washington County hospice patients to the approved alternate hospice providers. This closure plan was accepted and approved by NYSDOH by letter dated April 12, 2013.

Due to the County's ongoing difficulties in providing services to all the Washington County patients needing hospice care, Article 40 hospice providers serving contiguous counties have been requested to provide hospice services to Washington County patients, as needed, on a case-by-case basis. Both Community Hospice and High Peaks have been successfully providing such hospice services. Currently, the two hospice agencies are providing up to 50% - 60% of the needed hospice care services in Washington County, and both have established relationships with the referral sources and related agencies serving Washington County.

Once the County submitted its official closure plan, and with no other hospice providers having official approval to serve Washington County, both Community Hospice and High Peaks submitted formal CON applications requesting official approval to expand their approved geographic service areas into Washington County. Although both applicants agree to be responsible to assure service to the entire county at all times, each of their applications outline an identical collaborative plan developed between the two hospice providers to share their service responsibilities to Washington County. Each will concentrate their provision of hospice services within the geographic area of Washington County that is adjacent to their current geographic service area, with the other providing any and all necessary back-up whenever needed, thus assuring the entire county is being served at all times. In addition, each of these two hospice providers will serve Washington County from its existing approved satellite office located in a county that directly borders Washington County.

The Community Hospice, Inc., is currently in compliance with all applicable codes, rules, and regulations.

Recommendation

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

## Financial Analysis

### Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare	\$350,835	\$766,448
Medicaid	0	7,728
Commercial	<u>7,905</u>	<u>26,968</u>
Total Revenues:	\$358,740	\$801,144
Expenses:	<u>\$287,010</u>	<u>\$647,582</u>
Net Income:	<u>\$ 71,730</u>	<u>\$153,562</u>
Caseload:	42	91

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

	<u>Year One</u>	<u>Year Three</u>
Medicare	98%	96%
Medicaid	0%	1%
Other third party	2%	3%

Expense and utilization assumptions are based on applicant's historical experiences.

#### Capability and Feasibility

There are no project costs associated with this application.

The working capital requirement is estimated at \$47,835, which appears reasonable based on two months of first year expenses and will be satisfied from accumulated funds. BFA Attachment A indicates the availability of sufficient funds to provide the working capital.

The issue of feasibility is centered on the applicant's ability to offset expenses with revenues and maintain a viable operating entity. The applicant's budget indicates net revenue of \$71,730 and \$153,562 during the first and third years of operation. Revenues are based on current reimbursement methodologies for hospice services. The budget appears reasonable.

As shown on BFA attachment A, during 2011 and 2012 the applicant had an average positive working capital position and an average positive net worth position. Also the applicant achieved an average operating income of \$2,024,262

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

#### Recommendation

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

## Attachments

BFA Attachment A Financial Summary, 2012 and 2011, The Community Hospice



# Public Health and Health Planning Council

## Project # 121239-C Visiting Nurse Service of Rochester and Monroe County

**County:** Monroe County  
**Purpose:** Construction

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

### Executive Summary

#### Description

Visiting Nurse Service of Rochester and Monroe County, Inc. (VNS), is an existing not-for-profit corporation located at 2180 Empire Blvd, Webster, NY (Monroe County), which operates a full service Certified Home Health Agency (CHHA) as well as long term home health and hospice programs. VNS is requesting to expand their existing CHHA into Livingston, Ontario, Wayne and Wyoming counties, which are contiguous to Monroe County where VNS currently operates a CHHA. The sole corporate member of VNS is Strong Home Care Group, Inc. d/b/a Visiting Nurse Foundation and Affiliates (SHCG), which is an affiliate of University of Rochester Medical center (URMC).

requesting approval to expand into Livingston, Ontario, Wayne and Wyoming counties pursuant to the recent RFA for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

#### Financial Summary

There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$4,907,988
	Expenses:	<u>4,803,514</u>
	Gain(Loss):	<u>\$104,474</u>

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

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. VNS 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  
Approval

#### Program Summary

This proposal seeks approval to expand the service area of Visiting Nurse Service of Rochester and Monroe County, Inc., an existing CHHA. Visiting Nurse Service of Rochester and Monroe County, Inc. is currently approved to serve Monroe County and is

## Recommendations

Health Systems Agency  
The HSA recommends approval of this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date  
**August 1, 2013.**

# Need Analysis

## Background

Visiting Nurse Service of Rochester and Monroe County, Inc. (VNS), an existing certified home health agency (CHHA), approved to serve Monroe County, is requesting approval to expand into Livingston, Ontario, Wayne and Wyoming 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made 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;
- 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.

VNS is an existing CHHA currently serving Monroe County. This CON application is to expand their service area into Livingston, Ontario, Wayne and Wyoming counties.

In addition to operating a CHHA, the applicant also operates a Hospice, LTHHCP and Meals on Wheels serving Monroe County. The applicant is integrated with Strong Home Care Group (SHCG) which also includes Community Care of Rochester, a LHCSA d/b/a Visiting Nurse Signature Care (VNSC) which is licensed in 10 counties. SHCG is an affiliate of URMC, the largest health care provider in the region.

The applicant demonstrated their experience and knowledge regarding the operation of a CHHA throughout their application. The applicant is part of integrated health care system – SHCG which is affiliated with URMC. The applicant discussed their intention to develop additional collaborative agreements. The applicant discussed their current linkages in each of the counties they propose to serve in addition to describing their relationships with Nicholas Noyes Hospital and their sister corporation.

The applicant elaborated on their utilization of their Telehealth program and their Director of Program Development was named 2009 HCA Nurse Telehealth Champion of the Year. VNS describes their role in facilitating the transition of fee-for-service patients into MLTCPs and stated they have agreements with Elderplan and Fidelis. They also stated they were the first in Monroe County to start enrolling non-PACE patients into an MLTCP. The applicant discussed their sliding fee schedule to ensure patients receive home care regardless of economic status, in addition to their charity care available to patients meeting the qualifying criteria.

VNS has a 20% re-hospitalization rate compared to the national rate of 30%. They also stated that their patient spending decreased 25.1% from April 2011 to April 2012, demonstrating their success in cost effectiveness by decreasing average per patient spending. The applicant detailed their Care Transition Intervention Program from Hospital to home, which includes disease management programs to enhance care coordination, with the primary focus on care. They state that they will link their home care liaisons with the hospital discharge planners and how they currently place home care coordinators in hospitals and nursing homes for access to facility based EMRs. They stated they will foster frequent communication with physicians and described a very strong quality assurance plan.

The applicant provided sufficient information supporting their capacity to enhance care coordination and to ensure continuity of home health services throughout their application. They also discussed in detail their experience and ability to facilitate the implementation of the Medicaid Redesign Initiatives.

The applicant provided detailed gap analysis demonstrating need in the counties they propose to serve and addressing criteria specified in Section 709.1(a) of Title 10 NYCRR. They provided analysis of SPARCS data based on 2011 Hospital discharges by county. In addition, the applicant discussed information on Medicaid reimbursement of existing CHHAs in each county and how they will meet the needs of the medically underserved as well as community members with health risks.

Recommendation

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



## Programmatic Analysis

### Background

Visiting Nurse Service of Rochester and Monroe County, Inc. (VNS), is an existing not-for-profit corporation currently operating an Article 36 CHHA serving Monroe County. This application has been submitted by VNS to request approval to expand the service area of their existing CHHA into Livingston, Ontario, Wayne and Wyoming counties, pursuant to the recent RFA for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties. VNS CHHA also sponsors a long term home health care program (LTHHCP), currently authorized to serve patients in Monroe County.

VNS will serve the residents of Monroe, Livingston, Ontario, Wayne and Wyoming counties from their existing office located at 2180 Empire Boulevard, Webster, New York 14580.

The applicant proposes to provide the following home health care services:

home health aide	medical social services	physical therapy
nursing	occupational therapy	medical supply equipment, and appliances
nutritional	speech language pathology	

VNS CHHA and LTHHCP are currently in compliance with all applicable codes, rules and regulations.

### Recommendation

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

## Financial Analysis

### Operating Budget

The applicant has submitted an incremental operating budget for the first and third years, in 2013 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicaid	\$1,507,493	\$1,726,081
Medicare	1,957,241	2,241,043
Commercial Fee For Service	513,890	587,815
Private Pay	<u>400,298</u>	<u>458,341</u>
Charity Care	<u>(87,578)</u>	<u>(100,278)</u>
Bad Debt	(4,379)	(5,014)
Total Revenues	\$4,286,965	\$4,907,988
 Expenses	 <u>\$4,279,707</u>	 <u>\$4,803,514</u>
Net Gain(Loss)	\$7,258	\$104,474

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial	16.18%	19.15%
Medicare	46.84%	44.30%
Medicaid	31.06%	29.92%
Private Pay	3.48%	4.28%
Charity Care	2.15%	2.08%
Bad Debt	0.28%	0.27%

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 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 \$800,586, which appears reasonable based on two months of third year expenses. Half, or \$400,293, of the funding for the working capital requirement will be provided through the facility's line of credit with HSBC Bank, with terms of 3 years at 1.75%. The remaining \$400,293 of working capital was stated to be coming from VNS or from SHCG, but after review of both BFA Attachment A and B, it appears that neither of the entities has sufficient resources to cover the working capital amount.

VNS however, has a letter of support from URMC which is affiliated with SHCG stating that they will financially support VNS and has done so over the last several years. This has been necessary due to the facility having a very high pension liability and the facility's reimbursement rate being severely below their costs. Based on the review of BFA Attachment C, 2010-2011 certified financial statements for URMC, the facility has sufficient resources to cover the required working capital amount.

The submitted budget indicates that the applicant will achieve incremental net revenue in the first and third years of operations of \$7,258 and \$104,474, respectively. Revenue is based on current payment rates for CHHAs.

Presented as BFA Attachment A is the audited financial summary of Visiting Nurse Service Association of Rochester and Monroe Counties, Inc. The financial statements show that the applicant has maintained a negative working capital position and a negative net asset position, and achieved an average net operating loss of \$974,963 for the period 2011 through 2012. Currently, the facility is listed as an ongoing concern issue by their auditors, as VNS has a deficiency in net assets of \$14,282,551, and \$13,547,336 and in working capital of \$11,036,013 and \$10,243,553 for the years ended December 31, 2012 and 2011 respectively. The losses as mentioned above are related to two specific areas: (1) the defined benefit pension plan and (2) Private and Managed care insurers paying at rates below cost. With the defined benefit plan, it was frozen in 2002, but still causes 85% of the overall deficit. The facility is looking at ways to minimize this obligation, but in the current investment environment there are no cost effective termination strategies available. The facility is working on ways to eliminate these losses, such as:

- Becoming the primary service provider for MLTCPs
- Expand the service area into contiguous counties in order to spread administrative overhead to a larger base
- Expand the service area into contiguous counties that have a more robust payor mix, specifically Medicare, which traditionally has better reimbursement
- Continue and increase participation in integrated delivery systems and accountable care organizations
- Continue developing affiliated lines of business, including Telehealth and coaching

BFA Attachment B is the audited financial summary of Strong Home Care Group, Inc. d/b/a Visiting Nurse Foundation and Affiliates (SHCG). The financial statements show that the applicant has maintained a negative working capital position and a negative net asset position and achieved an average net operating loss of \$1,305,052 for the period 2011-2012. Currently, SHCG is listed as an ongoing concern issue by their auditors as they have a deficiency in net assets of \$15,575,154 and \$14,905,340 and in working capital of \$13,388,118 and \$12,521,274 for the years ended December 31, 2012 and 2011, respectively. The facility has noted that the losses shown are related to the operations of VNS and that the same reasons for the cause and the solutions are relevant to this entity as well.

BFA Attachment C is the audited financial summary of University of Rochester Medical Center. The financial statements show that the facility has maintained a positive working capital position and a positive net asset position and achieved average net revenue of \$105,065,500 for the period 2010-2011.

Based on the preceding, it appears that the applicant has demonstrated the financial capability to proceed in a financially feasible manner with continued support from URMC; and therefore approval is recommended.

Recommendation

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

## Attachments

BFA Attachment A	Financial Summary for Visiting Nurse Service Association of Rochester and Monroe, Counties, Inc. for 2011-2012
BFA Attachment B	Financial Summary for Strong Home Care Group, Inc. d/b/a Visiting Nurse Foundation and Affiliates 2011-2012.
BFA Attachment C	Financial Summary for University of Rochester Medical Center for 2010-2011



# Public Health and Health Planning Council

Project # 121245 C

## Lourdes at Home

**County:** Broome County  
**Purpose:** Construction

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

### Executive Summary

#### Description

Lourdes at Home, an existing certified home health agency (CHHA) operated by Our Lady of Lourdes Memorial Hospital, Inc., servicing Broome County, requests approval to expand its CHHA to provide services in Tioga, Chenango and Delaware counties.

#### Incremental Budget

Revenues:	\$673,196
Expenses:	<u>640,462</u>
Net Income:	\$32,734

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

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for application (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHAs. Lourdes at Home submitted an application in response to the competitive RFA, and was awarded RFA Approval. This CON application is in response to the RFA approval.

#### DOH Recommendation Approval

#### Program Summary

This proposal seeks approval to expand the service area of Our Lady of Lourdes Memorial Hospital, Inc. d/b/a Lourdes at Home CHHA. Lourdes at Home CHHA is currently approved to serve Broome County and is requesting approval to expand into Chenango, Delaware and Tioga counties pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

#### Financial Summary

There are no project costs associated with this application.

## Recommendations

Health Systems Agency

The HSA has no comment on the recommendation of this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 1, 2013.**

# Need Analysis

## Background

Our Lady of Lourdes Memorial Hospital, Inc. d/b/a Lourdes at Home, an existing Certified Home Health Agency (CHHA), approved to serve Broome County, is requesting approval to expand into Chenango, Delaware and Tioga 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made 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;
- 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.

This CON application is to expand Our Lady of Lourdes Memorial Hospital's, existing CHHS, d/b/a Lourdes at Home, approved to serve Broome County, into Chenango, Delaware and Tioga counties.

The applicant received Joint Commission Certification and Magnet Status from the American Nurse Credentialing Center and is currently the only CHHA in Broome County accepting pediatric home health care patients. Their staff is trained in pediatric care, and additionally they provide education of parents and caregivers. They indicated that over the past five years they have been called several times by DOH to respond to staffing shortages or surveillance issues in Chenango County. They provided information regarding their primary sources of referrals, including the 17 primary sites owned by Lourdes. In addition, the applicant discussed their MLTCP contract with Fidelis.

The applicant stressed their 'Core Values of Ascension Health' in service of the poor, reverence, integrity, and wisdom. They embrace three specific "Calls to Action" for quality healthcare which include addressing the rising cost to the NYS Medicaid system as well as the entire health care system; keeping patients' safe; and leaving no one behind. Their solutions include implementation of an integrated chronic care management program to reduce acute care hospitalizations and re-hospitalization rates for potentially preventable conditions; health coaching in self management support and evidenced based care in the patient's home; and negotiating contracts with MLTCPs to maintain continuity of care for the dual eligible patients in addition to allowing consumer directed programs in MLTC. They also stressed their sponsor relationship to a national healthcare system (Ascension Health) and address efficiencies within this model. They addressed how they will streamline operations and reduce operating cost by utilizing current usable space in all the proposed counties. They also described their presence in each county including the Hospice Owego Office to serve Tioga County; the Whitney Point Primary Care Site to serve Chenango County; and the Hancock Primary Care Site to serve Delaware County.

The applicant demonstrated how they will build access to efficient and effective community based systems of care through an integrated health care system and formal relationships that coordinate care with their partnerships with Lourdes on a Congestive Heart Failure initiative and their participation in Transitions in Care which assists patients and healthcare providers along the continuum; hospital, palliative care, home health, primary care, and hospice care. The applicant addressed their successful telehealth program for cost containment and efficiencies and emphasized their telehealth efforts in rural areas efforts; their electronic medical record experience with the entire southern tier region working toward an integrated medical record that patients can opt into; and their use of filed staff Smart Phones for streamlining communication and safety.

The applicant addressed Section 709.1(a) of Title 10 and their commitment to serving the entirety of the populations of the four counties as well as the medically underserved populations. To ensure that all patients have access home health care services they established the Patient Financial Assistance Program (PFAP). The applicant provided a detailed need analysis for each county in areas of access to health care and the analysis of how they will meet the inadequate services and needs with emphasis on primary care management. The applicant provided utilization data to support need using normative criteria for age and sex as outlined in Section 760.5(c)(2) of Title 10. They provided details regarding how they employ specific staff competencies to increase skill and awareness of diverse populations that they will serve regardless of ability to pay. In addition, they have a unique service in partnership with the OLOL Joint Academy and serve many Joint Academy patients on a short term basis until they are ready for outpatient therapy.

Recommendation

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

## Programmatic Analysis

### Background

Our Lady of Lourdes Memorial Hospital, Inc. is an existing not-for-profit voluntary corporation which operates a hospital located 169 Riverside Drive, Binghamton, New York 13095. Our Lady of Lourdes Memorial Hospital, Inc. also operates a Certified Home Health Agency. Lourdes at Home is currently authorized to serve patients in Broome County. Lourdes at Home CHHA also sponsors a long term home health care program (LTHHCP), currently authorized to serve patients in Broome County. Our Lady of Lourdes Memorial Hospital, Inc. also operates a hospice, Hospice at Lourdes, currently authorized to serve patients in Broome, Chenango, Delaware and Tioga 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 expand the service area of their existing CHHA into Chenango, Delaware and Tioga counties. Lourdes at Home will serve the residents of Broome, Chenango, Delaware and Tioga counties from their existing office located at 4102 Old Vestal Road, Vestal, New York 13850.

Lourdes at Home proposes to provide the following health care services:

home health aide	personal care	medical social services
nutritional	nursing	speech language pathology
physical therapy	audiology	medical supply, equipment and appliances
respiratory therapy	occupational therapy	

Our Lady of Lourdes Memorial Hospital, Inc., Lourdes at Home CHHA and LTHHCP and Hospice at Lourdes are currently in compliance with all applicable codes, rules and regulations.

### Recommendation

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

## Financial Analysis

### Operating Budgets

The applicant has submitted an incremental operating budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Commercial	\$164,998	\$173,331
Medicaid	100,570	105,428
Medicare	325,439	388,150
Private Pay	<u>6,162</u>	<u>6,287</u>
Total Revenues:	\$641,547	\$673,196
Expenses:	\$610,687	\$640,462
Net Income:	\$30,860	\$32,734



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

	<u>Year One and Three</u>
Commercial	22.5%
Medicare Fee-for-Service	51.0%
Medicare Managed Care	7.0%
Medicaid Managed Care	16.7%
Private Pay	0.8%
Charity Care	2.0%

Expenses and utilization assumptions are based on the historical experience of Lourdes at Home's existing CHHA. Revenues are reflective of current payment rates.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$106,744 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment A is the financial summary of Our Lady of Lourdes Memorial Hospital, Inc. and Affiliates, which indicates the availability of sufficient funds.

The submitted budget indicates a net income of \$30,860 and \$32,734 for the first and third years, respectively. Revenue is based on current payment rates for certified home health agencies. The budget appears reasonable.

As shown on BFA Attachment A, a financial summary of Our Lady of Lourdes Memorial Hospital, Inc. and affiliates indicates that the facility has experienced negative working capital, positive net assets and generated a net income of \$10,794,000 and \$18,938,000 for 2011 and 2012, respectively. The applicant has indicated the reason for the negative working capital is because the parent company of the Hospital allows their health ministries to keep only ten days of liquid cash. The balance of \$159,223,000 is in longer term investments, a portion of which can be readily converted for liquidity, if needed.

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, Our Lady of Lourdes Memorial Hospital, Inc. and Affiliates
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**New York State Department of Health  
Public Health and Health Planning Council**

**August 1, 2013**

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

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

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

**Downstate Request for Applications – Certified Home Health Agencies – Exhibit #7  
Construction**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121327 C	Hebrew Hospital Home LTHHCP (Bronx County) Ms. Hines – Abstained at EPRC	Approval

**Downstate Dear Administrator Letters – Long Term Home Health Care Program – Construction Exhibit #8**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121457 C	Split Rock Rehabilitation and Health Care Center (Bronx County) Ms. Hines – Abstained at EPRC	Approval



# Public Health and Health Planning Council

Project # 121327 C  
**Hebrew Hospital Home LTHHCP**

**County: Bronx County**  
**Purpose: Construction**

**Program: Certified Home Health Agency**  
**Submitted: April 20, 2012**

## Executive Summary

### Description

Hebrew Hospital Home of Westchester, Inc., (Hebrew Hospital Home) a not-for-profit entity, operates a long term home health care program in the Bronx and Queens. Hebrew Hospital Home is proposing to convert the LTHHCP to a Certified Home Health Agency (CHHA) and to expand the population it serves as a CHHA to provide nursing; home health aide; medical supplies; equipment; homemaker; housekeeper and personal care services; respiratory therapy; physical therapy; occupational therapy; speech pathology; and nutrition and social work services to the residents of Westchester County, as well as the boroughs of Manhattan (New York County), Brooklyn (Kings County), Queens (Queens County), and the Bronx (Bronx County). The applicant will not enter into any lease rental agreements.

### Incremental Budget:

Revenues	\$9,350,405
Expenses	<u>8,776,393</u>
Excess of Revenues over Expenses	\$574,012

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

### DOH Recommendation Approval

### Program Summary

This proposal seeks approval to convert the existing Hebrew Hospital Home of Westchester, Inc. d/b/a Hebrew Hospital Home Long Term Home Health Care Program, with current approval to serve Bronx and Queens counties, into Hebrew Hospital Home Certified Home Health Care Agency (CHHA), with approval to serve Bronx, Kings, New York, Queens 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.

### Financial Summary

There are no project costs associated with this application.

## Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

Hebrew Hospital Home of Westchester, Inc. d/b/a Hebrew Hospital Home Long Term Home Health Care Program (LTHHCP), approved to serve Bronx and Queens counties, is requesting approval to convert the existing LTHHCP into Hebrew Hospital Home Certified Home Health Care Agency (CHHA), with approval to serve Bronx, Kings, New York, Queens and Westchester 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made 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;
- 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.

Hebrew Hospital Home of Westchester, Inc. currently operates a residential health care facility and a long term home health care program (LTHHCP). The LTHHCP is currently approved to serve in Bronx and Queens counties. The applicant is requesting approval to convert the existing LTHHCP into Hebrew Hospital Home Certified Home Health Care Agency (CHHA), with approval to serve Bronx, Kings, New York, Queens and Westchester counties.

The applicant discussed their plan to contract with multiple Managed Care Organizations and described their history and strong relationships with Department of Social Services and a variety of community service organizations along with healthcare providers in Westchester and Bronx Counties. With the addition of Choices Gold and the expansion of HHH Choices Health Plan, the proposed CHHA will be poised to provide home health services to the expanding MAP and MLTCP consumer base in all five counties in the proposed services area.

The applicant detailed their plans to partner with a nurse practitioner practice; a prenatal network, hospitals; Pace University, community organizations; wound care centers; faith based organizations; home care agencies; ALPS; and other primary care practitioners as well as MCOs and MLTCPs. Hebrew Hospital Home described how these partnerships will decrease hospitalizations and emergency room visits in the applicant's Proposed Service Area. They described how these partnerships will foster efficiencies to meet the health care goals within each community and provide patient choice in providers with direct support of the MRT initiatives.

The applicant described their plan to use resources, home health aide clustering, and Telehealth to reduce and control utilization of CHHA services which should result in a reduction of actual nursing visits while maintaining patient monitoring. They described how the CHHA can minimize and even prevent hospital and nursing home readmissions by working with the MCO, physicians and the patients' family. The applicant stated that they will streamline operations and reduce operating costs through an overall care management process and working collaboratively with Chief Medical Officers.

The provided an anticipated increase expected number of Medicaid eligibles within the requested counties. They provided information on in and out migration for each of the counties they propose to serve and detailed the gap in current services through an analysis and described how they can help fill that gap. The applicant provided relevant data and data analysis regarding health status indicators and demographics characteristics of the population for the counties they propose to serve to demonstrate community need. HHH's LTHHCP already serves the medically underserved populations in Bronx and Queens counties including ethnic minorities, women, handicapped and the elderly. They anticipated their clients will transfer to the CHHA to stay with the same service providers.

Recommendation

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

## Programmatic Analysis

### Background

Hebrew Hospital Home of Westchester, Inc. is an existing not-for-profit voluntary corporation which operates a nursing home located at 61 Grasslands Road, Valhalla, New York 10595. The nursing home currently operates Hebrew Hospital Home Long Term Home Health Care Program (LTHHCP), located at 2100 Bartow Ave Ste 310, Bronx, New York 10475. The LTHHCP is approved to serve Bronx and Queens 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, New York and Westchester counties to their approved geographic service area.

The new CHHA will ultimately replace the existing LTHHCP and will be named Hebrew Hospital Home Certified Home Health Care Agency. The CHHA will be located at the LTHHCP's current location of 2100 Bartow Ave Ste 310, Bronx, New York 10475.

The applicant proposes to provide the following home health care services:

home health aide	medical social services	physical therapy
nursing	occupational therapy	respiratory therapy
nutritional	speech language pathology	medical supply equipment, and appliances
personal care	housekeeper	homemaker

Hebrew Hospital Home of Westchester, Inc., and Hebrew Hospital Home of Westchester, Inc. d/b/a Hebrew Hospital Home Long Term Home Health Care Program are 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 incremental budget, in 2013 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$397,725	\$1,869,702
Medicare Managed Care	379,936	1,552,305
Medicare Fee-for-Service	238,680	478,240
Commercial Fee-fo-Service	67,267	463,489
Other	<u>1,307,658</u>	<u>4,986,669</u>
Total Revenues	\$2,391,266	\$9,350,405
 Total Expenses	 2,049,547	 8,776,393
 Excess of Revenues over Expenses	 \$341,719	 \$574,012

The applicant has indicated that "other" revenue consists of the following programs: The FIDA program (Fully Integrated Dual Advantage) is a demonstration project being offered in the five counties in the proposed service area of the CHHA beginning in 2014. The FIDA program is a capitated managed care program, which provides comprehensive physical and behavioral healthcare, including waived services and additional services currently not offered by standard managed care plans. The FIDA program will provide such managed care services to individuals with Medicare and Medicaid through a managed long term care program and enrollment will be mandatory. "Other" revenues also consist of a MAP (Medicaid Advantage Plan), which is a managed care plan similar to an HMO for individuals with Medicare and Medicaid.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	15.87%	18.60%
Medicare Managed Care	14.31%	11.90%
Medicare Fee-for-Service	6.24%	2.73%
Commercial Fee-for-Service	3.02%	4.73%
Other	58.56%	60.04%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the historical experience of the LTHHCP.

#### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$1,462,732, which appears reasonable based on two months of third year expenses. The equity will come from the operations of HHH Foundation.

Presented as BFA Attachment B, is the 2012 certified financial statement of the Hebrew Hospital Home Organization, which includes the Foundation, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$341,719 and \$574,012 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 budget appears reasonable.

Presented as BFA Attachment A are the 2011 and 2012 certified financial statements of Hebrew Hospital Home of Westchester, Inc. As shown on Attachment A, the facility had an average negative working capital position and an average positive net asset position from 2011 through 2012. Also, the facility incurred average losses of \$661,740 from 2011 through 2012. The applicant has indicated that these losses are a result of reductions to its reimbursement rate, along with rebasing. To help offset these losses, the facility has reduced many expenses by consolidating positions, reducing overtime, eliminating positions and re-negotiating contracts.

As shown on Attachment B, the Foundation had a positive working capital position and a positive net asset position in 2012.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Financial Summary- Hebrew Hospital Home of Westchester, Inc.
BFA Attachment B	Financial Summary- Hebrew Hospital Home Organization, which includes the Foundation.





# Public Health and Health Planning Council

## Project # 121457-C Split Rock Rehabilitation and Health Care Center

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

**Program:** Certified Home Health Agency  
**Submitted:** June 22, 2012

### Executive Summary

#### Description

Split Rock Rehabilitation and Health Care Center, LLC, a 240-bed not-for-profit skilled nursing facility located in Bronx County with an existing 100 slot Long Term Home Health Care Program, requests approval to add a general purpose Certified Home Health Agency (CHHA) to the continuum of services in its current compliment. This will serve the residents of Bronx and Westchester County.

Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing Long Term Home Health Care Plan (LTHHCP) requesting approval as a general purpose CHHA. This authorization was subsequent to the Department issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

Effective May 1, 2012, a new Episodic Payment System (EPS) reimbursement methodology to reimburse CHHA providers for services provided to Medicaid patients receiving home care services took effect. The EPS is based on a price for 60 day episodes which will be adjusted by patient acuity and regional wage differences. The EPS was recommended by the Medicaid Redesign Team (MRT proposal #5) and authorized in the 2011-2012 enacted budget. The EPS is designed to address the issue of rapid growth in Medicaid costs per patient by better aligning payments with needed services and is part of a broad effort to promote the development of care management arrangements for Medicaid recipients.

DOH Recommendation  
Approval.

#### Program Summary

This proposal seeks approval to add a general purpose certified home health agency (CHHA) to Split Rock Rehabilitation and Health Care Center's residential health care facility (RHCF) and long term home health care program (LTHHCP), pursuant to the Dear Administrator Letter (DAL) HCBS 12-04, LTHHCP Opportunity to Become a General Purpose CHHA.

#### Financial Summary

There are no project costs associated with this application.

Incremental Budget:	Revenues:	\$9,270,378
	Expenses:	<u>9,005,427</u>
	Gain (Loss)	\$ 264,951

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

**Approval conditional upon:**

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [CHA]

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

Split Rock Rehabilitation and Health Care Center is requesting approval to expand the population served by their existing long term home health care program by adding a certified home health agency to serve Bronx and Westchester counties.

Chapter 56 of the Laws of 2012 authorized the Commissioner of Health to grant an expedited review of a certificate of need (CON) application submitted by an existing Long Term Home Health Care Plan (LTHHCP) requesting approval as a general purpose Certified Home Health Agency (CHHA). This authorization was subsequent to the Department issuing a Request for Applications (RFA) on January 25, 2012, to establish new or expand existing CHHAs in New York State.

### Solicitation

On May 10, 2012, the Department issued a Dear Administrator Letter (DAL) outlining the process for LTHHCPs who were eligible for the expedited review process authorized by Chapter 56 of the Laws of 2012.

A June 11, 2012 clarification letter to the May 10, 2012 DAL letter informed potential applicants that the process to establish or expand existing CHHAs in NYS is based on the demonstration of need and or the ability of the organization to facilitate Medicaid Redesign Initiatives. The applicant was expected to address these criteria in their responses to the questions in CON Schedule 21.

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 applicants that were deferred of the opportunity to submit supplemental information for the Department to consider in the review of these CONs.

### Review

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

The CON determination of need was based on the applicant's responses to CON Schedule 21 and any supplemental information requested by the Department. From this review, applicants were recommended in each county proposed based on how well their proposal addressed the review criteria.

Split Rock Rehabilitation & Health Care Center currently operates a residential health care facility and a LTHHCP. The LTHHCP is currently approved to serve Bronx County. In addition, the applicant is a member of the Tri-Care, LLC system of three residential health care facilities that serve the New York City region.

Split Rock is strategically positioned as a health care provider to implement CHHA services. Tri-Care, LLC has expertise and successful experience in long term home health care and adult day health care programs and contractual relationships with several MLTCPs and MCOs, which enhances continuity of care and patient choice. As part of the resident care and discharge process Split Rock Rehabilitation & Health Care Center refers residents to named local CHHAs. If approved, the residents may remain within the continuum of care provided by the applicant resulting in a seamless transition. Based upon the management review systems that the LTHHCP has in place, the cost per home care case is minimized. With better utilization of staff and by coordinating operation of the home care agency and RHCF, the applicant will more efficiently use that staff so that time, money and effort will not be wasted.

The applicant states that patients' care plans are created with cost-efficiency in mind, and seek to maximize informal and community supports. The plans will incorporate rehabilitation and recovery goals to restore patient to independence without formal supports. The applicant will provide case management services to advocate, refer, link and access other programs to enhance services and ensure maximum

benefits and supports. The QA & PI programs of the CHHA will include review of utilization and referrals to determine whether the services provided are necessary and/or appropriate.

The proposed CHHA will deal aggressively with acute illnesses to assure that the patient will remain in their own home and avoid hospitalizations. The CHHA's medical team will provide education, medical/nursing support in close contact with the physician, and caregiver support to minimize the need for hospitalization. The CHHA will educate patients and their families on the subject of wound care, safety assessment of the home to prevent falls and fractures, education on prevention of chronic disease, and dietary training. Efficiency will be maintained and costs contained through development and monitoring of the care plan and the costs of the services provided. Services will be provided in accordance with the patients' needs and monitored on an ongoing basis, and fee sources will be determined prior to service delivery. The existing LTHHCP has demonstrated a clear efficiency in service by decreasing the need for institutionalization and maintaining people in their own homes. The CHHA will be able to duplicate this model and utilize LTHHCP staff for support resulting in cost effectiveness as the staff can serve in dual roles. The CHHA will utilize effective linkages that are already in place to support all efforts in the continuum of care model.

The applicant currently has several named contractual relationships with managed care organizations in place and in the process of developing additional relationships with several MLTCPs which are expanding into the proposed service areas. The applicant will work collaboratively with MLTCPs to reduce and control costs by participation in the provision of case management for its patients enrolled in MLTCs. If a patient requires more than short-term CHHA services, Split Rock will work with the patient and the MLTC to ensure mandatory enrollment into the MLTCP for the continuation of services.

The applicant provided a detailed market gap analysis supporting the projected need for home care services in each proposed county. They detail the LTHHCP cost reports and the associated potential number of LTHHCP visits that could be converted to CHHA visits, as well as the skilled service visits billed to Medicaid. They discussed the projected increase of home care utilization and provided statistics describing the CHHA service visits utilization by county, supporting the likely increase in home care utilization in the mandatory enrollment environment. They provided hospital discharge and utilization rates by sex, age and county and the projected increase over the total service area. They provided statistics regarding Medicare and Medicaid eligibility and insurance status by sex and over the age of 75 representing the increase in the eligible Medicaid managed care population that were previously exempt. They also included the projected population numbers by county and gap analysis which supports the need.

The applicant will provide community education to patients and their family members. They have outreach programs in place throughout the community. The CHHA will develop initiatives specific to the community it serves to ensure the needs of the community are addressed. The proposed CHHA will fit into the community's long-range plan by implementing the MRT initiatives. The applicant's management team has experience, knowledge and expertise in the home health care setting.

Recommendation

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

## Programmatic Analysis

Split Rock Rehabilitation and Health Care Center currently operates a residential health care facility and a long term home health care program which serves Bronx County. The applicant is seeking approval to expand their population served by adding a CHHA that will do business under the name Split Rock Certified Home Health Agency and serve Bronx and Westchester counties. The applicant proposes to establish branch offices in each of the counties it plans to serve.

Split Rock Certified Home Health Agency proposes to provide the following home health care services: audiology, home health aide, homemaker, housekeeper, medical social services, medical supply,

equipment and appliances, nursing, nutritional, occupational therapy, personal care, physical therapy, respiratory therapy and speech language pathology.

The residential health care facility and long term home health care program operated by Split Rock Rehabilitation and Health Care Center are 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, during the first and third years; which are summarized below:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	\$1,399,014	\$1,380,168
Medicaid Managed Care	1,375,355	5,318,235
Medicare Fee-for-Service	899,883	2,265,875
Medicare Managed Care	105,860	253,440
Other	<u>21,800</u>	<u>52,660</u>
Total Revenues	\$3,801,912	\$9,270,378
Expenses	3,789,933	9,005,427
Net Gain (Loss)	<u>\$11,979</u>	<u>\$264,951</u>

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	45.0%	18.0%
Medicaid Managed Care	45.0%	72.0%
Medicare Fee-for-Service	5.0%	5.0%
Medicare Managed Care	2.0%	2.0%
Private Pay	1.0%	1.0%
Charity Care	2.0%	2.0%

Revenues are reflective of current payment rates as well as the implementation of the Medicaid Episodic Payment System. Expense assumptions are based on salaries in the area for CHHA services. Utilization assumptions are based on the applicant's discussions with former nurses currently employed by the applicant's long term home health team.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at \$631,656, appear reasonable based on two months of first year expenses. Presented as BFA Attachment B, is the draft financial statements of Split Rock Rehabilitation & Health Care Center which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirements.

The submitted budget indicates that the applicant will achieve an excess of revenues over expenses of \$11,979 and \$264,951 during the first and third years, respectively. Revenues are based on current payment rates as well as recent implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

Presented as BFA Attachment A are the 2010 and 2011 certified financial statement. As shown on Attachment A, the entity had an average negative working capital position and an average positive net asset position. The reason for the negative working capital position was due to a current liability account (owned to an affiliate) in the amount of \$5,472,298. The applicant made a personal equity contribution to the facility in the owed amount of \$6,000,000 and paid off the current debt. Also, the applicant achieved an average operating income of \$565,392. The facility had an operating loss of \$682,865 in 2010 and an operating gain of \$165,991 during 2011. The loss in 2010 was due to service revenue lower than budgeted and interest expense was very high. The owner contributed \$6,000,000 to the facility, was able to obtain a favorable interest rate and increased revenue which resulted in an operating gain in 2011.

Presented as BFA Attachment B, is the 2012 year end un-audited financial statement for the stated facility. As shown on Attachment B, the entity has a positive working capital position and positive net asset position. Also, the applicant achieved an operating income of \$2,878,924 for the period shown.

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- Split Rock Rehabilitation & Health Care Center

BFA Attachment B Un-audited Financial Summary – Split Rock Rehabilitation & Health Care Center

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

**August 1, 2013**

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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**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #9**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	111439 B	Bronx SC, LLC (Westchester County)	Contingent Approval
2.	122265 B	Island Ambulatory Surgery Center, LLC (Kings County)	Contingent Approval
3.	122270 B	Manhattan ASC, LLC (New York County)	Contingent Approval
4.	131151 E	Hudson Valley Ambulatory Surgery, LLC (Orange County)	Contingent Approval
5.	131243 E	Yorkville Endoscopy Center (New York County)	Contingent Approval

**Residential Health Care Facility – 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.	122219 E	Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing (Queens County)	Contingent Approval

- |    |          |   |                     |
|----|----------|---|---------------------|
| 2. | 131020 E | Providence Care, Inc. d/b/a<br>Providence Care Nursing and<br>Rehabilitation Center<br>(Kings County) | Contingent Approval |
| 3. | 131153 E | Oasis Rehabilitation and<br>Nursing LLC<br>(Suffolk County)   | Contingent Approval |

**Certificate of Incorporation**

**Exhibit #11**

**Applicant**

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

- |    |   |          |
|----|---|----------|
| 1. | Valentin Fuster – Mount Sinai Foundation for Science,<br>Health and Empowerment, Inc. | Approval |
|----|---|----------|

**Certificate of Amendment of the Certificate of Incorporation**

**Exhibit #12**

**Applicant**

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

- |    |  |          |
|----|--|----------|
| 1. | Planned Parenthood of South Central New York, Inc. | Approval |
| 2. | SS Joachim & Anne Residence                        | Approval |

**Certificate of Dissolution**

**Exhibit #13**

**Applicant**

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

- |    |                               |          |
|----|-------------------------------|----------|
| 1. | St. Camillus Foundation, Inc. | Approval |
|----|-------------------------------|----------|

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #14**

**Number**

**Applicant/Facility**

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

- |        |  |                     |
|--------|--|---------------------|
| 2056-L | 3 Angels Care, Inc.<br>(Queens and Nassau Counties)  | Contingent Approval |
| 1929-L | Allstar Homecare Agency, Inc.<br>New York, Bronx, Kings,<br>Richmond, Queens, and<br>Westchester Counties) | Contingent Approval |
| 1967-L | DBN Partners, Inc. d/b/a Always<br>Best Care of Lower Hudson<br>Valley<br>(Orange and Rockland Counties)   | Contingent Approval |
| 2057-L | Entire Care, Inc.  | Contingent Approval |



	(Kings, Westchester, Queens, Bronx, New York, and Richmond Counties)	
2170-L	F.A.B., LLC d/b/a F.A.B. Home Care Services (Kings, Richmond, Queens, Bronx, and New York Counties)	Contingent Approval
1801-L	Hand in Hand Home Care, LLC (Bronx, New York, Queens, Richmond, and Kings Counties)	Contingent Approval
2101-L	HomeCare Solutions, Inc. (Nassau, Suffolk, and Queens Counties)	Contingent Approval
2005-L	Li Bo Lui d/b/a Union Health Care (Bronx, Kings, new York, Queens, and Nassau Counties)	Contingent Approval
2049-L	Maxcare, LLC (Bronx, Kings, New York, Queens, and Richmond Counties)	Contingent Approval
2085-L	New Vision Home Care Services, LLC (Westchester County)	Contingent Approval
2064-L	All American Homecare Agency, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2181-L	Medford Hamlet LLC d/b/a Medford Hamlet Home Care (Nassau, Suffolk and Queens Counties)	Contingent Approval



# Public Health and Health Planning Council

Project # 111439-B

**Bronx SC, LLC**

**County:** Bronx County  
**Purpose:** Establishment and Construction

**Program:** Diagnostic and Treatment Center  
**Submitted:** May 19, 2011

## Executive Summary

### Description

Bronx SC, LLC (Bronx SC), a recently amended limited liability company requests approval to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty, freestanding ambulatory surgery center (FASC) providing surgical services related to podiatry, orthopedics and ophthalmology.

Bronx SC will lease 15,677 square feet on the ground level of a newly completed four-story building located at 3170 Webster Avenue, Bronx, New York 10467. The FASC site will include four operating rooms, along with the requisite support areas.

The proposed owners of Bronx SC consist of three classes of Members: Class A, which is comprised of nine physicians practicing locally; Class B, which is comprised of four individuals, who are employees and/or members of Cataract and Laser Center Partners, L.L.C. d/b/a Ambulatory Surgical Centers of America (ASCOA); and Class C, NYEE Holding Corporation, a not-for-profit corporation whose officers and board of trustees are also officers of New York Eye and Ear Infirmary (NYEEI). New York Eye and Ear Infirmary will not take an active role in the operation of the proposed FASC and will be a passive member of NYEE Holding Corporation.

Bronx SC expects to perform 5,473 procedures in its first year of operation, with the majority of these procedures currently being performed in the participating physicians' offices, other non-hospital based FASC's or at New York Eye and Ear Infirmary.

The proposed members of Bronx SC, LLC and their ownership percentages are as follows:

<u>Class A Members</u>		<u>Class B Members</u>	
John M. Aljian, MD	3.334%	Thomas Bombardier, MD	10.500%
Gabriel Dassa, DO	3.333%	Brent W Lambert, MD	10.500%
Barry Finkelstein, DPM	3.333%	Luke M. Lambert	3.500%
Gary R. Fishman, MD	3.334%	George A. Violin, MD	<u>10.500%</u>
Albert Graziosa, MD	3.333%	Total Class B	35.00%
Emmanuel Hostin, MD	3.333%		
Andrew Naing, MD	3.333%	<u>Class C Member</u>	
Arnold Wilson, MD	3.333%	NYEE Holding Corporation	<u>35.000%</u>
Jian Zhang, DPM.	<u>3.334%</u>	Total Class C	35.00%
Total Class A	30.00%		
		Total Class Members	100.00%

All Class A members are managers; Class B member, Thomas J. Bombardier, MD is a manager; and in Class C, there are two managers from NYEE Holding Corporation, Mr. Allen Fine and Mr. Charlie Figliozzi.

Three of the four Class B members, Thomas J. Bombardier, MD, Brent W. Lambert, MD, and George A. Violin, MD, are also approved members of two Article 28 FASC's currently operating in New York State (Specialty Surgery Center of Central New York, LLC and Melville Surgery Center, LLC). All four Class B members are members of South Shore Surgery Center, LLC, which recently started operation as a FASC in Suffolk County (Project No. 042011-B). In addition the Class C member, NYEE Holding Corporation, and all four Class B members are

members of New York Eye and Ear Infirmary Surgery Center of Bayside, Queens, LLC (Project No. 111552).

#### DOH Recommendation

Contingent Approval is recommended for a limited life of five (5) years.

#### Need Summary

Bronx SC, LLC proposes to provide multi-specialty ambulatory surgery services including podiatric, orthopedic, and ophthalmologic surgery services for the residents of the Bronx County. It is projected that there will be 5,960 procedures performed in the first year of operation.

#### Program Summary

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

#### Financial Summary

The total project costs of \$7,535,497 will be met from the members' personal investment of \$1,507,099, plus a seven year loan from Wells Fargo Equipment Finance, Inc., for \$6,028,398 with an estimate interest rate of 5%.

Budget:	Revenues:	\$ 8,449,532
	Expenses:	<u>\$ 7,309,699</u>
	Gain/ (Loss)	\$ 1,139,833

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 review for this project.

Office of Health Systems Management

**Approval with an expiration of the operating certificate five (5) 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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation.  
These reports should 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]
4. 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]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
6. Submission of 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 if it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
7. Submission of a bank loan commitment for the applicant's financing that is acceptable to the Department of Health. [BFA]
8. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA, CSL]
9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01 [AER].
10. Submission of an executed Certificate of Amendment of the Articles of Organization that is acceptable to the Department. [CSL]
11. Submission of an executed Third Amendment of the Operating Agreement that is acceptable to the Department. [CSL]
12. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
13. Submission of an executed Certificate of Incorporation of NYEE Holding Corp., that is acceptable to the Department. [CSL]

14. Submission of revised Organizational Chart for Bronx SC, LLC, that is acceptable to the Department. [CSL]
15. Submission of a revised Administrative and Services Agreement that is acceptable to the Department. [CSL]
16. Submission of a fully executed first amendment to the Administrative and Services Agreement that is acceptable to the Department. [CSL]
17. Submission of a current list of all Bronx SC, LLC members and interest, 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 April 30, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

Bronx SC, LLC seeks to establish and construct a multi-specialty ambulatory surgery services including podiatric, orthopedic, and ophthalmologic surgery services. The center will be located at 3170 Webster Avenue, Bronx, 10467, in Bronx County.

### Analysis

Bronx County is the service area for this project.

Bronx SC projects to perform approximately 5,473 procedures in the first year operation and 5,806 procedures by year 3. The majority of these procedures are performed in physicians' offices or at the proposed Beth Israel Medical Center.

Bronx County has two freestanding multi-specialty and two freestanding single-specialty ASCs:

Existing Freestanding Ambulatory Surgery Centers in Bronx County, Source: SPARCS 2011

ASC Type	Name	Number of Patients in 2011
Multi-Specialty	ASC of Greater NY	9,854
Multi-Specialty	Surgicare ASC of NY	3,537
Endoscopy	Advanced Endoscopy Center	8,278
Gastroenterology	NY GI Center, LLC	6,825
Total		28,494

There are three freestanding multi-specialty ASC projects approved in Bronx County that are not yet operational.

Bronx SC has provided a statement committing to serve all persons in need of the care without regard to their ability to pay or the source of payment. This statement is acceptable to the Department.

### Conclusion

The proposed project will bring existing private practices into the regulatory environment of an Article 28 ambulatory surgery center and will provide Bronx County patients better access to procedures that are currently being performed in Manhattan.

### Recommendation

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

## Programmatic Analysis

### Program Description

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

<b>Proposed Operator</b>	Bronx SC, LLC
<b>Site Address</b>	3170 Webster Avenue, Bronx
<b>Surgical Specialties</b>	Ophthalmology Orthopedic Podiatric
<b>Operating Rooms</b>	4 (Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 6:00 p.m. (Extended as necessary to accommodate patient needs).
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	32.2 FTEs / 34.6 FTEs
<b>Medical Director(s)</b>	John M. Aljian, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and distance</b>	Expected to be provided by Beth Israel Medical Center 10.9 miles and 21 minutes in travel time
<b>On-call service</b>	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 (30%)**

John M. Aljian, MD	3.33%	Manager
Gabriel Dassa, DO	3.33%	Manager
Barry Finkelstein, DPM	3.33%	Manager
Gary R. Fishman, MD	3.33%	Manager
Albert Graziosa, MD	3.33%	Manager
Emmanuel Hostin, MD	3.33%	Manager
Andrew Niang, MD	3.33%	Manager
Arnold Wilson, MD	3.33%	Manager
Jian Zhang, DPM	3.33%	Manager

#### **Class B (35%)**

Thomas J. Bombardier, MD	10.50%	Manager
Brent W. Lambert, MD	10.50%	
George A. Violin, MD	10.50%	
Luke M. Lambert	3.5%	

#### **Class C (35%)**

NYEE Holding Corp.		
Allan Fine		Manager
Charlie Figliozzi		Manager
Ralph Lambiasi		

The Class A members are individual practicing physicians and podiatrists with medical practices within the service area of the proposed ASC.

The four (4) Class B members are employees of, and have ownership interests in Ambulatory Surgery Centers of America (ASCOA). ASCOA provides administrative and consulting services to ambulatory surgery centers nationwide and is proposed to enter into such an agreement with the applicant.

The Class C member, NYEE Holding Corporation is a proposed not-for-profit subsidiary of New York Eye and Ear Infirmary (NYEEI). The proposed directors of NYEE Holding Corp. are employees of the hospital. The hospital is a member of Continuum Health Partners, however, neither the hospital nor Continuum will take an active role in the operation of the center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's 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. Gary Fishman was issued an Order of Conditions by the Board of Professional Medical Conduct effective October 11, 2011 (Order # 11-238). The Order of Conditions is a non-disciplinary action which sets out conditions with which the licensee must comply.
- Dr. Jian Zhang disclosed one (1) pending malpractice claim. Dr. Albert Graziosa disclosed one (1) pending malpractice claim and one settled claim. Dr. Arnold Wilson disclosed one (1) settled and five (5) pending malpractice claims.

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.

- Specialty Surgery Center of Central New York was fined \$8,000 for a 2007 wrong-sided surgery incident. Patient was admitted for lateral rectus recession of the right eye. Although the eye was marked and visible and a time out was conducted, surgery commenced on the left eye. The error was discovered but a suture was required to close the inappropriate incision.

#### Integration with Community Resources

The Center plans to work with its patients to educate them regarding the availability of, and services offered by, local primary care physicians and community hospitals and the specialty services offered by the New York Eye and Ear Infirmary (NYEEI). The Center will work collaboratively with NYEEI to build programs and partnerships to educate the community of the services offered at the Center. The Center will offer a sliding fee schedule for patients without health insurance.

The Center commits to becoming a network provider in the provider-led health homes designated by the Department of Health for Bronx and the surrounding counties as health homes are implemented. The Center will consider joining any Accountable Care Organization that is formed in (or for providers in) Bronx County.

The Center plans to implement an EMR system and will investigate the potential of joining a RHIO, such as the New York Clinical Information Exchange.

#### Recommendation

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



## Financial Analysis

### Administrative Services Agreement

The applicant has submitted an executed administrative services agreement, the terms of which are summarized below:

Date: May 21, 2010  
Facility: Bronx SC, LLC  
Contractor: Cataract and Laser Center Partners, L.L.C. d/b/a Ambulatory Surgery Centers of America (ASCOA)  
Services Provided: Assist project description, 18 month pro forma financial feasibility study including projecting operating costs and revenues; recommend physical space specifications, arrange for architect to develop plans, and assist facility inspections and reviews; assist in securing necessary permits, licenses and certification to operate facility; advise on the purchase of equipment and supplies; help in securing project financing; assist in the development of policy and procedures; coordinate legal counsel regarding organizational documents, licensure, as well as initial and continuing operations; assist in implementing, billing and collection procedures, along with accounts receivable and payable procedures; assist in the development of fee schedules, and payor contracts; advise with respect to any joint venture agreements; advise in the development of forms, policies, and procedures to comply with the law; assist in utilization management, quality assurance procedures and software management systems; assist in human resource administration; assist in developing budgets, accounting procedures, controls, reporting systems, and timely reports.  
Term: 7 years – automatically renews for successive three (3) year terms  
Fee: Annual Fee of \$300,000 (1/12 to be paid monthly = \$25,000)  
Expense reimbursement not to exceed \$100,000 per calendar year; amounts exceeding such limitation must be approved by the Company prior to reimbursement.

Class B members of Bronx SC are employed and/or members of Cataract and Laser Center Partners, LLC d/b/a Ambulatory Surgery Centers of America (ASCOA), the administrative services agreement provider. ASCOA is a national provider of consulting and administrative services to ambulatory surgery centers.

### Lease Rental Agreement

The applicant has submitted a draft lease agreement for the proposed site, as summarized below:

Date: March 28, 2013  
Premises: 15,677 gross square feet located on the first floor and approximately 15,899 square feet of cellar parking area, located at 3170 Webster Avenue, Bronx, New York 10467  
Landlord: 3170 Webster Avenue, LLC  
Lessee: Bronx SC, LLC  
Term: 20.5 years (1<sup>st</sup> years rent is at \$470,310 per year or \$30 per square foot); to increase each year by 2% per year. Renewal term: (2) ten year terms at 95% of the prevailing market rate.  
Provisions: Utilities, maintenance, and realty tax increases

The applicant has provided an affidavit stating the propose lease is an arm's length arrangement, and has provided realtor letter's attesting to the rental rate as being of fair market value.

Total Project Cost Financing

Total project costs for renovation and acquisition of moveable equipment is estimated at \$7,535,497, broken down as follows:

Renovation & Demolition	\$3,698,211
Design Contingency	369,820
Construction Contingency	369,820
Architect/Engineering Fees	333,179
Other Fees	124,800
Movable Equipment	2,343,026
Telecommunications	141,440
Interim Interest Expense	111,993
CON Application Fee	2,000
CON Processing Fee	<u>41,208</u>
Total Project Cost	\$7,535,497

Project costs are based on a December 1, 2013 start date with a five month construction period.

The applicant's financing plan appears as follows:

Equity - members of Bronx SC, LLC will contribute	\$1,507,099
Bank Loan (5%, 7-year term)	<u>6,028,398</u>
Total	\$7,535,497

A letter of interest has been provided from Wells Fargo Equipment Finance, Inc.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2013 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,005,395	\$8,449,532
Expenses:		
Operating	\$5,593,061	\$5,910,037
Capital	<u>1,456,554</u>	<u>1,399,662</u>
Total Expenses	\$7,049,615	\$7,309,699
Net Income or (Loss)	\$955,780	\$1,139,833
Utilization: (procedures)	5,473	5,806
Cost Per Procedure	\$1,288.07	\$1,258.99

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

Medicaid Fee-for-Service	3.14%
Medicaid Managed Care	7.10%
Medicare Fee-for-Service	22.96%
Medicare Manage Care	2.00%
Commercial Fee-for-Service	15.00%
Commercial Manage Care	46.80%
Private Pay	1.00%
Charity	2.00%

Expense and utilization assumptions are based on combined experiences from: Bronx SC member physicians, Ambulatory Surgery Centers of America, and similar centers in New York State. The applicant has submitted physician referral letters in support of the utilization projections. The costs are covered at approximately 88% of the first year's projected utilization or 4,817 procedures.

#### Capability And Feasibility

The total project cost of \$7,535,497 will be satisfied by the proposed members contributing \$1,507,099 from their personal resources and entering into a \$6,028,398 bank loan from Wells Fargo Equipment Finance, Inc., at the above stated terms.

Working capital requirements are estimated at \$1,218,283 which appears reasonable based on two months of third year expenses. The proposed members' will provide the working capital from their own financial resources.

Presented as BFA Attachments A and B, are the applicant's personal net worth statements and The New York Eye and Infirmary and Affiliates 2011 and 2012 certified financial summary. Review of both attachments indicates there are sufficient liquid resources to meet the equity and working capital requirements for this project. While there are enough total liquid resources available in totality, 3 of the class A members do not have enough readily available liquid assets. As seen on BFA Attachment A, Gabriel Dassa DO, Barry Finkelstein DPM and Emmanuel Hostin MD, however have substantial assets, which they can borrow against and they have expressed to the Department that they will do so in order to cover their portion of equity and working capital amounts.

Presented as BFA Attachment C, is Bronx SC, LLC pro-forma balance sheet that shows operations will start off with \$2,725,383 in positive equity.

Bronx SC projects an operating surplus of \$955,780 and \$1,139,833 in the first and third years of operation, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while those from commercial payers are based on experience. The budget appears reasonable.

Presented as BFA Attachments D through F, are the 2011 and 2012 certified financial summary for Specialty Surgery Center of Central New York, LLC, and the 2012 internal financial summaries for Melville Surgery Center, LLC, and South Shore Surgery Center, LLC, respectively, which some of the Class B members have ownership interest in. Each of the three entities had positive working capital and positive net assets, and generated operating surpluses for the years shown.

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 BFA Attachment B	Personal Net Worth Statement of Proposed Members of Bronx SC, LLC Financial Summary for 2011 and 2012, The New York Eye and Ear Infirmary and Affiliates
BFA Attachment C BFA Attachment D	Pro-forma Balance Sheet of Bronx SC, LLC Financial Summary for 2011 and 2012, Specialty Surgery Center of Central New York, LLC
BFA Attachment E BFA Attachment F	Internal Financial Summary for 2012, Melville Surgery Center, LLC Internal Financial Summary for 2012, South Shore Surgery Center, LLC Map Attachment

## Supplemental Information

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:** Lincoln Medical & Mental Health Center  
234 East 149<sup>th</sup> Street  
Bronx, New York 10451

Current OR Use (% capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
82%	<b>Ambulatory</b>  10,452	<b>Inpatient</b>  6,968	None	NA

Lincoln Medical and Mental Health Center opposes the application. The hospital predicts that the proposed ASC would have negative ramifications on Lincoln and could jeopardize its financial stability. The hospital states that the location of the proposed facility would make it likely that patients currently seen in Lincoln's specialty clinics and who reside in the hospital's primary and secondary catchment areas will be referred to the proposed ASC. The hospital states that any reduction in referrals would directly impact Lincoln's ambulatory surgery revenues and adversely affect the hospital's ability to provide outpatient services.

The hospital acknowledges that none of the physicians slated to practice at the proposed ASC currently perform surgery at Lincoln.

**Facility:** Jacobi Medical Center  
Pelham Parkway & Eastchester Road  
Bronx, New York 10461

No response.

**Facility:** Bronx-Lebanon Hospital Center  
Concourse Division  
1276 Fulton Avenue  
Bronx, New York 10456

No response.

**Facility:** Montefiore Medical Center  
1825 Eastchester Road  
Bronx, New York 10461

In responding to the Department's request for comments, the hospital addressed only the potential impact of the proposed facility on Montefiore's Westchester Square Hospital site.

Westchester Sq. Current OR Use (% capacity)	Westchester Square Surgery Cases		Westchester Square Amb. Surg. Cases by Applicant Physicians	Westchester Square Reserved OR Time for Applicant Physicians
Not available	<b>Ambulatory</b>  4,793	<b>Inpatient</b>  934	954	No

Montefiore assumes that all 954 cases performed by the applicant physicians at Westchester Square will be lost to the proposed facility. At an estimated \$2,811 in revenue per ambulatory surgical case, this would result in a loss of \$2,680,000 to Montefiore Westchester Square. The hospital does not describe the impact of this loss, if any, on its community-oriented programs.

Montefiore also points out that its approved Montefiore Hutchinson hospital extension facility in the East Bronx will have 12 ambulatory operating rooms when it opens in late 2014. The hospital argues that in the hospital systems in the region, including Montefiore, Jacobi Medical Center, Bronx Lebanon and St. Barnabas, and with the addition of the Montefiore Hutchinson facility, there will be sufficient operating room capacity to address the current and future needs of patients in the Bronx.

In 2010, Montefiore Medical Center experienced an operating gain of \$77.0 million on total operating revenues of \$2.9 billion. In 2011, the hospital had a gain of \$70.9 million on operating revenues of \$2.9 billion. The hospital's current assets in 2010 were \$1.2 billion and current liabilities were \$582.3 million, for a working capital ratio of 2.1 to 1.0. In 2011, current assets were \$1.2 billion and current liabilities \$579.4 million, for a working capital ratio of 2.1 to 1.0. Montefiore reports that in 2010, Westchester Square Medical Center had charity allowances of \$319,616 and bad debt expense of \$4,007,092 out of total charges of \$194,332,236, or 2.2% of total charges. In 2011, Westchester Square reported charity allowances of \$320,925 and bad debt expense of \$3,831,623 out of total charges of \$183,731,685, or 2.3% of total charges.

#### **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 nine physicians who have committed to performing cases at the proposed facility and on 1,500 cases from the New York Eye and Ear Infirmary (NYEEI), which through its subsidiary not-for-profit corporation, NYEE Holding Corporation, will be an owner of the proposed ASC. These latter 1,500 procedures are based on projections of procedures that the ASC could expect to see from NYEEI clinic patients residing in the Bronx and Westchester Counties. The applicant also cites growing demand for ambulatory surgical procedures, as evidenced by SPARCS data showing an increase of 345% in ambulatory surgery cases for freestanding facilities in Bronx County between 2000 and 2010.

The applicant further states that performing cases in a facility that is under the control of the member physicians, who have practices in the local community, and which is responsive to the needs of the participating physicians, will result in greater convenience and efficiency for patients and physicians, which will encourage utilization of 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:** The applicant states that none of the cases projected for the facility are currently performed in an office setting. The majority of the cases are currently performed in other, non-hospital based ASCs (60%) or at New York Eye and Ear Infirmary (30%).

#### **OHSM Comment**

Of the two hospitals that offered comments on this application, one states that none of the physicians who intend to operate at the proposed ASC currently practice at that hospital. This renders the hospital's prediction of an adverse impact on its revenues entirely speculative. The second hospital's objections are based on the assumption that the applicant physicians who currently practice at the hospital would cease performing ambulatory surgery at that facility, in effect transferring their entire caseload to the ASC. This is at odds with the applicants' statement that the great majority of the procedures projected for the ASC are currently performed in other, non-hospital based ASCs (60%) and at the New York Eye and Ear Infirmary (30%), which through a subsidiary, will be an owner of the ASC. The Department finds that the objections of the two hospitals to the proposed ASC do not provide a sufficient basis for reversal or modification of the recommendation for approval of the 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 1st day of August, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a multi-specialty freestanding ambulatory surgery center providing surgical services related to podiatry, orthopedics and ophthalmology at 3170 Webster Avenue, Bronx, 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:

111439 B

FACILITY/APPLICANT:

Bronx SC, LLC

APPROVAL CONTINGENT UPON:

**Approval with an expiration of the operating certificate five (5) 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 an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation.  
These reports should 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]
4. 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]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
6. Submission of 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 if it is concluded that proceeding with the proposal is acceptable. [RNR, CSL]
7. Submission of a bank loan commitment for the applicant's financing that is acceptable to the Department of Health. [BFA]
8. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA, CSL]
9. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01 [AER].
10. Submission of an executed Certificate of Amendment of the Articles of Organization that is acceptable to the Department. [CSL]
11. Submission of an executed Third Amendment of the Operating Agreement that is acceptable to the Department. [CSL]
12. Submission of an Operating Agreement that is acceptable to the Department. [CSL]



13. Submission of an executed Certificate of Incorporation of NYEE Holding Corp., that is acceptable to the Department. [CSL]
14. Submission of revised Organizational Chart for Bronx SC, LLC, that is acceptable to the Department. [CSL]
15. Submission of a revised Administrative and Services Agreement that is acceptable to the Department. [CSL]
16. Submission of a fully executed first amendment to the Administrative and Services Agreement that is acceptable to the Department. [CSL]
17. Submission of a current list of all Bronx SC, LLC members and interest, 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 April 30, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

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

Barbara DelCogliano  
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 # 122265 B  
**Island Ambulatory Surgery Center, LLC**

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

**Program:** Ambulatory Surgery Center  
**Submitted:** December 5, 2012

## Executive Summary

### Description

Island Ambulatory Surgery Center, LLC, a proposed limited liability company, requests approval for the establishment of a multi-specialty freestanding ambulatory surgical center to provide surgical services in the specialties of pain management, plastic surgery, orthopedics and podiatry. The center will be located in approximately 7,500 square feet on the first floor of an existing building located at 2279 Coney Island Avenue, Brooklyn. The center will have three operating rooms, two procedure rooms, eleven pre-op/recovery bays, ancillary space and appropriate support space. The center will be staffed with one board certified cosmetic surgeon, four board certified orthopedic physicians, and one board certified podiatric physician.

The proposed members of Island Ambulatory Surgery Center, LLC are Leonid Reyfman, M.D. (90%), and BIMC Holding Corp (10%), a non-profit corporation affiliated with Beth Israel Medical Center consisting of three board members. Presented as BFA Attachment A, is the organizational chart.

### DOH Recommendation

Contingent approval for a limited life of five years.

### Need Summary

Island Ambulatory Surgery Center proposes to provide multi-specialty ambulatory surgery services to the communities of Kings County. It is projected that there will be 10,945 procedures provided in year one.

### 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. The landlord will be constructing and equipping the center.

Budget:	Revenues:	\$8,044,939
	Expenses:	<u>6,818,977</u>
	Net Income:	\$1,225,962

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 of 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 signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation.  
These reports should 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]
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 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. Submission of an executed working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease agreement that is acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an executed lease agreement between JAR Real Estate Group, LLC and Island Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Articles of Organization of Island Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Operating Agreement of Island Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of all information of BIMC Holding Corporation as required by Schedule 14B (VII) (B) (1-3), including a list of members, directors and officers, its Certificate of Incorporation with any amendments, and its corporate Bylaws with any amendments, 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 February 28, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

Island Ambulatory Surgery Center, LLC seeks to establish and construct a multi-specialty ambulatory surgery center at 2279 Coney Island Avenue, Brooklyn, 11223, in Kings County to provide pain management, plastic surgery, orthopedics, and podiatry surgical services.

### Analysis

The number of projected procedures is 10,945 in the first year and 13,243 in the third year. The projections are based on the actual experience of the surgeons who will be utilizing the proposed center.

The primary service area is the Southern Brooklyn neighborhood that includes zip codes 11223, 11224, 11229, and 11235.

Currently, Kings County has five (5) multi-specialty freestanding Ambulatory Surgery Centers and eight (8) single-specialty freestanding Ambulatory Surgery Centers.

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

*Existing Ambulatory Surgery Centers: Kings County, Source: SPARCS*

<b>ASC Type</b>	<b>Name</b>	<b>Number of Patients 2011</b>
Multi Specialty	All City Family Healthcare Center, Inc.	3,593
Multi Specialty	ASC of Brooklyn	3,976
Orthopedics	Beth Israel ASC-Brooklyn Div.	887
Multi Specialty	Brook Plaza ASC, Inc.	8,463
Multi Specialty	Brooklyn Endoscopy and ASC, LLC	4,990
Ophthalmology	Brooklyn Eye Surgery Center	4,566
Gastroenterology	Digestive Diseases D & TC (Opened 12/29/2009)	1,829
Endoscopy	Endoscopic ASC of Bay Ridge, Inc.	505
Endoscopy	Endoscopic D & TC, LLC	2,917
Gastroenterology	Gastroenterology Care, Inc. (Opened-3/17/11)	N/A
Endoscopy	Greater NY Endoscopic Surgical Center	6,792
Multi Specialty	Millennium ASC (Opened 6/8/2011)	N/A
Ophthalmology	Sheepshead Bay Surgery Center	4,427
<b>Total</b>		<b>42,945</b>

Additionally, in Kings County, a total of five freestanding ASCs, four single-specialty and one multi-specialty, have been approved but are not yet operational. Four of these have been approved for a limited life of five years.

Island Ambulatory Surgery Center, LLC is committed to providing services to all persons in need of surgical care regardless of their ability to pay or the source of payment.

Island Ambulatory Surgery Center, LLC 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

Approval of the proposed facility would bring under Article 28 regulation surgical cases currently being performed in the participating physicians' private offices. It would also bring multi-specialty ASC services to Southern Brooklyn neighborhoods that include a health professional shortage area (HPSA) for Medicaid-eligible primary care services.

## Recommendation

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

# Programmatic Analysis

## Background

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

Proposed Operator	Island Ambulatory Surgery Center, LLC
Site Address	2279 Coney Island Avenue, Brooklyn
Surgical Specialties	Multi-specialty: Pain Management Plastic Orthopedic Podiatry
Operating Rooms	3
Procedure Rooms	2
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1 <sup>st</sup> Year / 3 <sup>rd</sup> Year)	21.5 FTEs / 24.5 FTEs
Medical Director(s)	Leonid Reyfman
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Beth Israel, Kings Highway Division 2.3 miles and 8 minutes
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

## Character and Competence

The members of the LLC are:

Name	
Leonid Reyfman, MD	90.00%
BIMC Holding Corp	10.00%
• Gail Donovan	
• John Collura	
• Beth Essig	

Dr. Reyfman is a practicing physician. BIMC Holding Corp is a not-for-profit entity affiliated with Beth Israel Medical Center. The three directors of BIMC Holding are officers of the Medical Center.

Staff from the Division of Hospitals and Diagnostic and Treatment Centers 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 and Diagnostic and Treatment Centers 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 include primary and specialty care services as part of their transfer and affiliation agreement with Beth Israel Medical Center, specifically for patients who present themselves to the center in need of primary care services. A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services.

The applicant, while not committing to joining an Accountable Care Organization or Medical Home, does intend to develop a mutual network relationship with Beth Israel Medical Center. They intend to utilize an electronic medical record system and will explore joining a regional health information organization or health information exchange.

#### Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. 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 will lease approximately 7,500 square feet of space on the first floor of a newly constructed building located at 2279 Coney Island Avenue, Brooklyn, under the terms of the proposed lease agreement summarized below:

Landlord:	Jar Real Estate Group, LLC
Lessee:	Island Ambulatory Surgery Center, LLC
Term:	10 years with the option to renew for an additional five years.
Rental:	\$398,100 for the first year, increasing 5% annually.
Provisions:	The lessee will be responsible for utilities, maintenance, insurance and taxes.

The applicant has indicated that there is common membership interest between the landlord and lessee. Therefore, the lease will be a non-arm's length agreement and letters of opinion from licensed commercial real estate brokers have been submitted indicating rent reasonableness. Other non-related parties occupy the remainder of the building.

## Operating Budget

The applicant has submitted an operating budget in 2013 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$6,668,035	\$8,044,939
Expenses:		
Operating:	5,229,329	6,252,022
Capital:	<u>543,251</u>	<u>566,955</u>
Total Expenses:	\$5,772,580	\$6,818,977
Net Income:	\$895,455	\$1,225,962
Utilization: (procedures)	10,945	13,243
Cost per procedure:	\$527.42	\$514.91

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

	<u>Year One and Three</u>
Commercial Fee-for-Service	20%
Commercial Managed Care	20%
Medicare Fee-for-Service	39%
Medicaid Fee-for-Service	6%
Medicaid Managed Care	10%
Private Pay	3%
Charity Care	2%

Expenses and utilization assumptions are based on the historical experience of the physician's private practices. Upon CON approval, the proposed members will continue to operate their private practices. Each physician has provided a referral letter in support of utilization projections.

## Capability and Feasibility

There are no project costs associated with this application. The landlord will be constructing and equipping the center.

Working capital requirements are estimated at \$1,136,496 based on two months of third year expenses. The applicant will finance \$568,248 of working capital at an interest rate of 7% over 5 years, for which a letter of interest has been provided by Capital One Bank. The remaining \$568,248 will be provided as equity by the proposed members. Presented as BFA Attachment C, is the pro-forma balance sheet of Island Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity of \$568,248.

The submitted budget indicates a net income of \$895,455 and \$1,225,962 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

Presented as BFA Attachment D, a financial statement of Beth Israel Medical Center, the hospital has maintained positive working capital and net assets and generated a net income of \$27,045,000 and \$67,164,000 for 2011 and 2012, respectively.

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, approval is recommended.**



## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth of Proposed Member
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary, Beth Israel Medical Center
BHFP Attachment	Map

## Supplemental

### Island Ambulatory Surgery Center CON #122265

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, NY 11212

No response.

**Facility:** New York Community Hospital of Brooklyn  
2525 Kings Highway  
Brooklyn, NY 11215

No response.

**Facility:** Maimonides Medical Center  
4802 Tenth Avenue  
Brooklyn, NY 11219

No response.

**Facility:** Lutheran Medical Center  
150 55<sup>th</sup> Street  
Brooklyn, NY 11219

No response.

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

No response.

### **Supplemental Information from Applicant**

**Need and Source of Cases:** The applicant states that the projected volume for the proposed facility will come from the physicians practicing in the Brooklyn community who have expressed interest in operating at the ASC. The applicant also expects that ongoing and projected growth in ambulatory surgery in general will be a source of cases for the proposed facility, as will convenience in scheduling and the location of the ASC in an out-of-hospital setting.

**Staff Recruitment and Retention:** The applicant plans to recruit necessary staff through a hiring program. To the extent that additional staff may be needed, the proposed operators are committed not to actively seeking to attract staff from local hospitals.

**Office-Based Cases:** The applicant states that approximately 26 percent of the procedures projected for the proposed ASC are currently performed in office-based settings. The remaining procedures have traditionally been performed in the inpatient setting.

### **OHSM Comment**

In the absence of comments from area hospitals, the Department finds no reason to consider reversal or modification of the recommendation for five-year limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 1st day of August, 2013, 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 freestanding multi-specialty ambulatory surgery center to provide pain management, plastic surgery, orthopedics and podiatry services to be located at 2279-81 Coney Island Avenue, 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:

122265 B

Island Ambulatory Surgery Center, 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 signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation.  
These reports should 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]
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 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]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. Submission of an executed working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed building lease agreement that is acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an executed lease agreement between JAR Real Estate Group, LLC and Island Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Articles of Organization of Island Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Operating Agreement of Island Ambulatory Surgery Center, LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of all information of BIMC Holding Corporation as required by Schedule 14B (VII) (B) (1-3), including a list of members, directors and officers, its Certificate of Incorporation with any amendments, and its corporate Bylaws with any amendments, 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 February 28, 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:

Barbara DeICogliano  
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 # 122270-B

## Manhattan ASC, LLC

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

**Program:** Ambulatory Surgery Center  
**Submitted:** December 7, 2012

### Executive Summary

#### Description

Manhattan ASC, LLC, a recently formed limited liability company, to be renamed Surgery Center of Manhattan, LLC (Manhattan ASC) requests approval to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty freestanding ambulatory surgery center (FASC) specializing in ophthalmology and otolaryngology procedures.

Manhattan ASC, LLC will lease 13,312 square feet on the lower level of a 40 story multi-purpose building located at 465 Park Avenue, New York. The FASC site will include four operating rooms along with the requisite support areas.

The proposed members of Manhattan ASC, LLC and their ownership percentages are as follows:

<u>Class A Members</u>		<u>Class B Members</u>	
Anna Aronzon, MD	2.00%	William M. Karnes	3.34%
Brian Campolattaro, MD	4.00%	Thomas Mallon	3.33%
Won-Taek Choe, MD	4.00%	Jeffrey Simmons	3.33%
Tahl Colen, MD	2.00%	Total Class B	10.00%
Jay Dolitsky, MD	4.00%		
David Godin, MD	4.00%	<u>Class C Member</u>	
Gregory Levitin, MD	4.00%	NYEE Holding Corp.	38.00%
		Total Class C	38.00%
Lisa Liberatore, MD	2.00%		
Guy Lin, MD	4.00%	Total Class Members	100%
Anthony Panarelli, MD	2.00%		
Stephen Perrone, MD	2.00%		
Michael Pitman, MD	2.00%		
Edward Shin, MD	4.00%		
Shai Shinhar, MD	4.00%		
David Volpi, MD	4.00%		
H. Jay Wisnicki, MD	4.00%		
Total Class A	52.00%		

comprised of 16 board-certified physicians practicing locally; Class B comprised of three individuals, who are employees and/or members of Regent Surgical Health, LLC; and Class C comprised of NYEE Holding Corporation, a not-for-profit corporation whose officers and board of trustees are also officers of New York Eye and Ear Infirmary (NYEEI). NYEEI will not take an active role in the operation of the proposed FASC and is a passive parent of NYEE Holding Corporation.

Regent Surgical Health, LLC is an Illinois limited liability company which invests in outpatient ambulatory surgical centers and surgical hospitals across the nation and with some international exposure. Manhattan ASC expects to perform 6,078 procedures in its first year of operation with approximately 70% of these procedures currently being performed at NYEEI. According to the applicant, shifting the ophthalmology and otolaryngology cases from NYEEI to the proposed FASC will provide needed additional capacity at NYEEI.

The managers of Manhattan ASC are: (Class A) Brian Campolattaro, MD; David Godin, MD; Gregory Levitin, MD; and David Volpi, MD; (Class B) Thomas Mallon; (Class C) Allen Fine and Charlie Figliozzi.

Class C member, NYEE Holding Corporation, is a member of New York Eye and Ear Infirmary Surgery Center of Bayside Queens, LLC, an FASC which was contingently approved by the Public Health and Health Planning Council on February 2, 2012 under CON 111552.

#### DOH Recommendation

Contingent approval is recommended for a limited life of five (5) years.

The proposed ownership of Manhattan ASC, LLC consists of three classes of Members: Class A,

Need Summary

Manhattan ASC, LLC proposes to provide multi-specialty ambulatory surgery services specializing in ophthalmology and otolaryngology procedures.

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 total project costs of \$9,321,334 will be met from the members' personal investment of \$2,796,401 plus a seven year term loan from Siemens Financial Services, Inc., for \$6,524,933 with an estimate interest rate of 6%.

Budget:	Revenues:	\$8,810,028
	Expenses:	<u>\$7,358,420</u>
	Gain/ (Loss)	\$1,451,608

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 with an expiration of the operating certificate five (5) years from the date of its issuance is recommended, contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payor source;
  - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided, and
  - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of 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]
4. Submission of a commitment for a project loan that is acceptable to the Department of Health. [BFA]
5. Submission of a commitment for a working capital loan that is acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative service agreement that is acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement 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 an executed Certificate of Amendment of the Articles of Organization that is acceptable to the Department. [CSL]
10. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
11. Submission of revised Organizational Chart for Manhattan ASC, LLC. that is acceptable to the Department. [CSL]
12. Submission of a current list of all Manhattan ASC, LLC members and interest, that is acceptable to the Department. [CSL]
13. Submission of a revised Administrative and Services Agreement that is acceptable to the Department. [CSL]
14. Submission of a fully executed Lease, or evidence of site control, that is acceptable to the Department. [CSL]

**Approval conditional upon:**

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



5. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by March 31, 2014. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**August 1, 2013.**

# Need Analysis

## Background

Manhattan ASC, LLC seeks to establish and construct a multi-specialty ambulatory surgery center. The proposed freestanding multi-specialty ambulatory surgery center will be located at 465 Park Avenue, New York, 10022, in New York County and will be known as Surgery Center of Manhattan, LLC.

This application is developed in conjunction with the New York Eye and Ear Infirmary (NYEEI), whose subsidiary is a member of Manhattan ASC, LLC. NYEEI would like to move outpatient surgical cases from its main campus to offsite locations by partnering with local physicians to create specialty ASCs in the community. The ambulatory surgery operating rooms at NYEEI's main campus are at capacity. Approximately 70 percent of the cases at the proposed Center are currently being performed at NYEEI and shifting these cases to an offsite Center will free up capacity at the main campus.

## Analysis

The primary service area of the proposed ASC is New York County. It is projected that there will be 6,078 procedures performed in the first year of operation and 6,448 by year 3. These projections are based upon the participating surgeons' current case load. New York County has a total of six freestanding multi-specialty ASCs and seven freestanding single-specialty ASCs.

### *Existing Ambulatory Surgery Centers: New York County*

*Source: SPARCS 2011*

<u>ASC Type</u>	<u>Name</u>	<u>Total Patients 2011</u>
Multi-Specialty	Center for Specialty Care	4,757
Gastroenterology	East Side Endoscopy	9,059
Multi-Specialty	Fifth Avenue Surgery Center	1,494
Endoscopy	Kips Bay Endoscopy Center LLC	9,504
Gastroenterology	Manhattan Endoscopy Center, LLC	617
Ophthalmology	Mid-Manhattan Surgi-Center	3,661
Multi-Specialty	Midtown Surgery Center, LLC	2,867
Multi-Specialty	Surgicare of Manhattan, LLC	3,350
Multi-Specialty	Gramercy Park Digestive Disease Center	N/A
Multi-Specialty	Gramercy Surgery Center, Inc.	N/A
Gastroenterology	Carnegie Hill Endo, LLC	N/A
Ophthalmology	Retinal ASC of NY, Inc.	N/A
Gastroenterology	West Side GI	N/A
Total		35,309

In addition there are three freestanding ASCs, two single-specialty ASCs and one multi-specialty ASC, which have been approved but are not yet operational.

The applicant has provided a mission statement that is acceptable to the Department. The applicant has also 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. The applicant is committed to serving all persons without regard to ability to pay or the source of payment.

## Conclusion

The proposed ASC will move a significant number of outpatient surgical cases from the main campus of New York Eye and Ear Infirmary (NYEEI) to its member subsidiary Manhattan ASC, LLC. Since this projected case load is primarily based on the participating surgeons' current demand, there is a high probability that the projected volume will be achieved in the proposed time frames. Operation of the proposed ASC will also free up needed OR capacity at NYEEI.

## Recommendation

**From a need perspective, contingent approval is recommended for a limited life of five (5) years.**

## Programmatic Analysis

### Program Description

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

Proposed Operator	Manhattan ASC, LLC upon approval will change the name to: Surgery Center of Manhattan, LLC
Site Address	465 Park Avenue, New York
Surgical Specialties	Multi-specialty: Ophthalmology Otolaryngology
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	20.22 FTEs / 22 FTEs
Medical Director(s)	Edward Shin
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by New York Eye and Ear Infirmary 3 miles and 12 minutes
On-call service	Access to the facility's on-call physician during hours when the facility is closed.

### Character and Competence

The members of the LLC are:

Class A Members – 52%

Anna Aronzon, MD	(2%)	
Brian Campolattaro, MD	(4%)	Manager
Won-Taek Choe, MD	(4%)	
Tahl Colen, MD	(2%)	
Jay Dolitsky, MD	(4%)	
David Godin, MD	(4%)	
Gregory Levitin, MD	(4%)	
Lisa Liberatore, MD	(2%)	Manager
Guy Lin, MD	(4%)	
Anthony Panarelli, MD	(2%)	
Stephen Perrone, MD	(2%)	
Michael Pitman, MD	(2%)	
Edward Shin, MD	(4%)	
Shai Shinhar, MD	(4%)	
David Volpi, MD	(4%)	
H. Jay Wisnicki, MD	(4%)	Manager

Class B Members – 10%

William Karnes	(3.33%)	
Thomas Mallon	(3.33%)	
Jeffrey Simmons	(3.33%)	Manager

Class C Member – 38%

NYEE Holding Corp.	(38%)	
Allan Fine		
Charles Figliozzi		Manager
Ralph Lambiasi		Manager

The Class A members are all physicians with medical practices in the proposed service area. The Class B members are employed by and have ownership interests in Regent Surgical Management, LLC, with whom the facility will enter into an administrative services agreement. Regent Surgical has national and international experience managing hospitals and ambulatory surgery centers across the country and in Ireland. NYEE Holding Corp. is a not-for-profit corporation whose sole member is New York Eye and Ear Infirmary. The officers of NYEE Holding are employees of the hospital.

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.

Drs. Campolattaro, Colen, and Panarelli disclosed one pending malpractice case each. Dr. Liberatore disclosed one settled malpractice case. Dr. Perrone disclosed three settled malpractice cases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

#### Integration with Community Resources

The center will take steps to integrate into existing health care resources in the community by becoming a provider in one of the provider-led designated health homes in New York County and by becoming a member of an Accountable Care Organization. Additionally, the applicant intends to implement an electronic medical record system within 18 months of commencing operations and will investigate the potential of joining a regional health information organization or health information exchange. The center has committed to serving all persons in need of its specialty care without regard to race, sex, religion, creed, sexual orientation, ability to pay, source of payment, or other personal characteristics.

#### Compliance with Applicable Codes, Rules and Regulations

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

#### Recommendation

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

## Financial Analysis

#### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, the terms are summarized below:

Facility:	Manhattan ASC, LLC
Contractor:	Regent Surgical Management, L.L.C.
Services Provided:	Provide ongoing support to maintain the Facility's Medicare Accreditation status. Prepare for AAAHC or Joint Commission survey. Assist in purchasing and monitoring cost and quality objectives. Assist in developing physical specifications and obtaining and monitoring relevant permits & licenses. Assist in the development of policy and procedures; coordinate legal counsel regarding organizational documents. Implement and supervise billing and collection. Advise on the development of health service and payor contracts. Assist in utilization management, quality assurance procedures, software management systems and security of health information. Assist in human resources administration, and coordinate contractual relationships. Assist in developing operating budgets, accounting procedures and regular reporting on the facilities clinical and financial operations. Assist in annual financial reporting, and development of an internal audit program. Assist in banking arrangements.

Term: 10 years – with (1) five year renewal term  
 Fee: Annual Fee – 1<sup>st</sup> year \$332,000; 2<sup>nd</sup> year \$412,000; 3<sup>rd</sup> year \$433,000; 4<sup>th</sup> year \$455,000; 5<sup>th</sup> year \$478,000; and for each year following the 5<sup>th</sup> year of the term of this agreement, the monthly fee shall be mutually determined by Manhattan ASC, LLC and Regent Surgical Management, L.L.C. (the fees are to be paid monthly). Additionally, If the Contractor aka Consulting Company does not achieve at least four of seven performance targets the monthly fee shall be decreased by 10%, and if Consulting Company achieves at least six of the seven performance targets, the monthly fee shall be increased by 10% (Performance Category evaluated quarterly: AR Aging; Supply Cost per case, Labor Cost per case; Total Expenses per Case w/o interest & depreciation; Patient Satisfaction; Employee Turnover; and Outpatient Case Volume). Expense reimbursement not to exceed \$50,000 in the first calendar year and \$36,000 per calendar year after the initial year that are incurred by the Consulting Company on the Company's behalf.

Regent Surgical Management, LLC provides day to day management to surgical centers and hospital nationwide and is a wholly-owned subsidiary of Regent Surgical Health, LLC; the entity that employs and is partially owned by the Class B members.

#### Lease Rental Agreement

The applicant has submitted a letter of intent to lease for the proposed site, the terms are summarized below:

Premises: The lower floor located at 465 Park Avenue, New York, New York 10022 which is approximately 13,312 gross square feet.  
 Landlord: Cohen Ritz Retail Company, LLC  
 Lessee: Manhattan ASC, LLC to be renamed Surgery Center of Manhattan, LLC  
 Term: Years 1-5 (\$998,400 per year or \$75.00 per square foot); Years 6-10 (\$1,064,960 per year or \$80.00 per square foot) Years 11-15 (\$1,131,520 per year or \$85.00 per square foot) Years 16-16.5 (\$1,264,640 per year or \$95.00 per square foot)  
 Rent Abatement: Eighteen months in total, distributed in the following way: Lease Months 1-9, 20, 35, 49, 61, 62, 75, 88, 101 and 114  
 Provisions: Utilities, taxes, insurance and maintenance

The applicant has provided an affidavit stating the propose lease is an arm's length arrangement, and has provided realtor letter's attesting to the rental rate as being of fair market value.

Total project costs for renovation and acquisition of moveable equipment is estimated at \$9,321,334, broken down as follows:

Renovation & Demolition	\$4,880,834
Design Contingency	488,083
Construction Contingency	488,083
Planning Consultant Fees	120,000
Architect/Engineering Fees	527,000
Other Fees	525,898
Movable Equipment	2,035,362
Financing Costs	64,000
Interim Interest Expense	139,098
CON Application Fee	2,000
CON Processing Fee	<u>50,976</u>
Total Project Cost	\$9,321,334

Project costs are based on a November 1, 2013 start date with a five month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$2,796,401
Loan (6%, 7-year term)	<u>6,524,933</u>
Total	\$9,321,334

A letter of interest has been provided from Siemens Financial Services, Inc. at the above stated terms.

#### Operating Budget

The applicant has submitted first and third years operating budgets, in 2013 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,304,297	\$8,810,028
Expenses:		
Operating	\$5,040,205	\$5,337,527
Capital	<u>2,134,299</u>	<u>2,020,893</u>
Total Expenses	\$7,174,504	\$7,358,420
Net Income or (Loss)	\$1,129,793	\$1,451,608
Utilization: (procedures)	6,078	6,448
Cost Per Procedure	\$1,180.41	\$1,141.19

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

Medicaid Fee-for-Service	2.0%
Medicaid Managed Care	3.0%
Medicare Fee-for-Service	25.0%
Medicare Manage Care	2.0%
Commercial Fee-for-Service	15.0%
Commercial Manage Care	50.0%
Private Pay	1.0%
Charity	2.0%

Utilization assumptions are based on the experiences from Manhattan ASC member physicians. The applicant has submitted physician referral letters in support of utilization projections. Note that the projected Medicaid utilization is approximately 9% less than the 2011 / 2012 payor mix at NYEEI based on SPARCS data. Expenses are based upon the experiences of their members, along with those of other FASCs in New York State. The breakeven point is approximately 86.4% of the first year's projected utilization, or 5,250 procedures and approximately 83.4% of the third year's projected utilization or 5,380 procedures.

#### Capability and Feasibility

The total project cost of \$9,321,334 will be satisfied by a \$2,796,401 investment from the proposed members personal resources and taking out a \$6,524,933 loan from Siemens Financial Services, Inc., at the above stated terms. Working capital requirements are estimated at \$1,226,403 which appears reasonable based on two months of third year expenses. The proposed members' will provide \$613,202 of the working capital from their personal resources and entered into a \$613,201 four year working capital loan with Siemens Financial Services, Inc., at a 6% interest rate. Presented as BFA Attachments A and B are the applicant's personal net worth statements and The New York Eye and Infirmary and Affiliates 2011 certified financial summary. Review of attachments A and B indicates there are sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment C is Manhattan ASC, LLC pro forma balance sheet that shows operations will start off with \$3,409,603 in positive equity.

Manhattan ASC, LLC projects an operating excess of \$1,129,793 and \$1,451,608 in the first and third years, respectively. Revenues are based on current and projected federal and state governmental reimbursement methodologies, while commercial payers are based on experience. The budget appears reasonable.

Presented as BFA Attachments D is the 2011 consolidated and combined financial summary for Regent Surgical Health, LLC and Subsidiaries and Regent Surgical Health, Inc., which is partly owned by the Class B members and is their employer. The summary shows a positive working capital, positive equity and positive net income for 2011.

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 of Manhattan ASC, LLC
BFA Attachment B	Financial Summary for 2011, The New York Eye and Ear Infirmary and Affiliates
BFA Attachment C	Pro-forma Balance Sheet of Manhattan ASC, LLC
BFA Attachment D	Financial Summary for 2011, Regent Surgical Health, LLC and Subsidiaries and Regent Surgical Health, Inc.
BHFP Attachment	Map

## Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** NYU Langone Medical Center  
550 1<sup>st</sup> Avenue  
New York, NY 10016

No response.

**Facility:** New York Presbyterian Hospital-New York Weill Cornell Center  
525 East 68<sup>th</sup> Street  
New York, NY 10032

No response.

**Facility:** Lenox Hill Hospital  
100 East 77<sup>th</sup> Street  
New York, NY 10021

No response.

## Supplemental Information from Applicant

**Need and Sources of Cases:** The applicant states that the utilization projected for the proposed facility is based on the current caseload of the 18 member physicians who have committed to perform cases at the proposed ASC. A large number of these cases (70 percent) are currently being performed at the New York Eye and Ear Infirmary (NYEEI), which supports the application and represents an attempt by NYEEI to move outpatient surgical cases from its main campus to off-site locations by partnering with local physicians. The applicant also expects that consumers' and third-party payers' preferences for utilizing freestanding ASC's will contribute to use of the facility, as will expected continued growth in the utilization of ambulatory surgical procedures in New York County.

**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 noted, 70 percent of the cases projected for the proposed ASC are currently being performed at NYEEI. An additional 16 percent are occurring in the applicant physicians' private offices or at other non-hospital based ASCs. The remaining portion is expected to come from modest growth in the physicians' current cases.

## 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 1st day of August, 2013, 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 freestanding multi-specialty ambulatory surgery center specializing in ophthalmology and otolaryngology procedures to be located at 465 Park Avenue, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

122270 B

Manhattan ASC, LLC

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payor source;
  - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided, and
  - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of 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]
4. Submission of a commitment for a project loan that is acceptable to the Department of Health. [BFA]
5. Submission of a commitment for a working capital loan that is acceptable to the Department of Health. [BFA]
6. Submission of an executed administrative service agreement that is acceptable to the Department of Health. [BFA]
7. Submission of an executed lease agreement 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 an executed Certificate of Amendment of the Articles of Organization that is acceptable to the Department. [CSL]
10. Submission of an Operating Agreement that is acceptable to the Department. [CSL]
11. Submission of revised Organizational Chart for Manhattan ASC, LLC. that is acceptable to the Department. [CSL]
12. Submission of a current list of all Manhattan ASC, LLC members and interest, that is acceptable to the Department. [CSL]
13. Submission of a revised Administrative and Services Agreement that is acceptable to the Department. [CSL]
14. Submission of a fully executed Lease, or evidence of site control, that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]
5. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
6. The applicant shall complete construction by March 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:

Barbara DelCogliano  
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 # 131151 E Hudson Valley Ambulatory Surgery, LLC

**County:** Orange County  
**Purpose:** Establishment

**Program:** Diagnostic and Treatment Center  
**Submitted:** March 19, 2013

### Executive Summary

#### Description

Hudson Valley Ambulatory Surgery (HVAS), LLC an existing limited liability company certified as a multi-specialty freestanding ambulatory surgical center (FASC), requests approval to transfer ownership interests to eight new members consisting of four new physician owners and the four individual owners of Cataract and Laser Center Partners, LLC, d/b/a Ambulatory Surgical Centers of America (ASCOA). HVAS currently has one class of membership interest consisting of 123 issued and outstanding units whose members are comprised of nine individual physicians, Family Footcare Group, LLP (69.11%) and Orange Regional Medical Center (ORMC) (30.89%). Upon approval, HVAS will consist of three classes: Class A will consist of the physician owners, Class B will consist of ASCOA owners, and Class C will consist of ORMC. Their membership interest will be as shown below:

Class A	49%
Class B	25%
Class C	26%

Class A members are local board certified physicians who must meet the eligibility requirements per the operating agreement. Class B members must be persons or entities who are not eligible physicians or ORMC. The three classes are being utilized to allow for ease of future membership interest transfer and allocation of rights under the operating agreement. They do not have any differences in relation to voting rights or other ownership rights in the LLC.

The proposed issuance of new membership interests exceeds 25% within five years, requiring Public Health and Health Planning Council approval.

#### DOH Recommendation

Contingent Approval

#### Need Summary

Because this project involves only a change in ownership arrangements, there will be no need recommendation for this application

#### Program Summary

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

#### Financial Summary

Purchase price of \$20,295 per unit will be met with equity from each of the proposed new members. Presented as BFA Attachment B is the net worth statements of the proposed new members showing sufficient funds.

Budget:	Revenues:	\$4,669,545
	Expenses:	<u>4,615,539</u>
	Net Income:	\$54,006

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 Partnership Agreement of Family Footcare Group, LLP, acceptable to the Department. [CSL]
2. Submission of a Membership Interest Purchase Agreement, acceptable to the Department. [CSL]
3. Submission of a Unit Redemption Agreement, acceptable to the Department. [CSL]
4. Submission of documentation evidencing the reverse split of the membership units of Hudson Valley Ambulatory Surgery, LLC, acceptable to the Department. [CSL]
5. Submission of Subscription Agreements for each incoming member, acceptable to the Department. [CSL]
6. Submission of the Articles of Organization of Hudson Valley Ambulatory Surgery, LLC, acceptable to the Department. [CSL]
7. Submission of the Operating Agreement of Hudson Valley Ambulatory Surgery, LLC acceptable to the Department. [CSL]
8. Submission of an Administrative Service Agreement, acceptable to the Department. [CSL]

Approval Conditional Upon:

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 1, 2013.**

## Programmatic Analysis

### Character and Competence

The new proposed members of the LLC are:

<u>Proposed</u>	<u>Percentage</u>
Luke Lambert	
George Violin, MD	2.5%
Brent Lambert, MD	7.5%
Thomas Bombardier, MD	7.5%
Phillip Massengill, MD	7.5%
Sergey Koyfman, DO	1.0%
Mark Driver, MD	2.0%
Richard DeMaio, MD	1.0%
Eric Kaplan, DPM**	3.0%
** new member of the (already approved) Family Footcare Group, LLP	0.15%

### Already Approved

Family Footcare Group LLP  
Gregg Atlas  
Paul Atlas  
Nancyann Condro  
Marc Hudes  
Eric Kaplan  
Charles Episalla, MD  
Virginia Feldman, MD  
Ronald Israelski, MD  
Ofer Jacobowitz, MD  
Eric Marin, MD  
Severin Paldowyz, MD  
John Peralo, MD  
Steven Weinstein, MD  
Bradley Wiener, MD  
Orange Regional Medical Center

Eight (8) of the nine (9) proposed members are practicing surgeons. One (1) of the proposed members is an MBA-prepared CEO with 17 years of owner/manager operations experience.

Four (4) of the new members (Mr. Lambert and Drs. Violin, Lambert, Bombardier) are owners of Cataract and Laser Center Partners, LLC, d/b/a Ambulatory Surgical Centers of America (ASCOA). ASCOA is an ambulatory surgery center company that develops and manages ASCs and currently operates 32 facilities across the country.

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. Sergey Koyfman has 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.

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

Recommendation

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

## Financial Analysis

### Unit Redemption Agreement

The applicant has submitted an executed unit redemption agreement for the reverse stock split of the company's current 123 units issued and outstanding, so that following such split the company will have 100 units issued and outstanding with each unit representing 1% membership interest. The purpose of the reverse stock split is to issue units in the company to additional members and establish proportions among the classes. BFA Attachment A shows membership percentage before and after approval.

### Membership Interest Purchase Agreement

The applicant has submitted an executed membership interest purchase agreement, the terms of which are summarized below:

Date:	March 20, 2013
Purpose:	Purchase 25% Class B membership interests (25 units)
Seller:	Hudson Valley Ambulatory Surgery, LLC
Purchasers:	Thomas J. Bombardier, MD (7.5%, 7.5 units, \$152,212.50) Brent W. Lambert, MD (7.5%, 7.5 units, \$152,212.50) Luke Lambert (2.5%, 2.5 units, \$50,737.50) George A. Violin, MD (7.5%, 7.5 units, \$152,212.50)
Purchase Price:	\$507,375 (\$20,295/ unit) due at closing.

### Subscriptions Agreement

The applicant has submitted executed subscription agreement forms, in which each proposed new Class A physician member agrees to the terms and conditions of the amended and restated operating agreement and subscription form. Upon execution of the subscription form, 10% of the total purchase price for each member is due with the remaining 90% due at closing. As shown on BFA Attachment A is the equity requirement for each new proposed member. Presented as BFA Attachment B are the net worth statements of the proposed new members showing sufficient funds.

### Administrative Services Agreement

Hudson Valley Ambulatory Surgery, LLC will enter into an Administrative Services Agreement with Cataract and Laser Center Partners, LLC d/b/a Ambulatory Company of America. The consultant will provide certain professional, business and administrative services to the ambulatory surgery center relating to the operation of the facility.

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

Date:	March 20, 2013
Facility:	Hudson Valley Ambulatory Surgery, LLC
Consultant:	Cataract and Laser Center Partners, LLC d/b/a Ambulatory Company of America.

Duties of Consultant: Produce financial feasibility study; obtain and maintain licenses and permits; purchase supplies and capital equipment; secure project financing; develop, provide and advise regarding policies and procedure manuals; financial and accounting services; human resource administration; coordinate contracts with various external organizations and general administrative services.

Term: 5 years with a first renewal term of 5 years and automatic renewal every 3 years thereafter.

Compensation: \$280,000/year to immediately and permanently be increased to \$320,000/year preceding a 12 month period of net revenues equal to \$5,326,000; \$360,000/year on the date the net revenues equal \$6,000,000; \$420,000/year on the date net revenues equal \$7,000,000.

### Operating Budgets

The applicant has provided first and third year budgets, in 2013 dollars, summarized below:

	<u>Year One and Year Three</u>
Revenues:	\$4,669,545
Operating Expenses:	<u>4,615,539</u>
Net Income:	\$54,006
Utilization (procedures):	7,915
Cost per procedure:	\$583.14

The applicant does not project an increase in utilization as a result of this project, since patient care services will not be affected or interrupted.

Expense assumptions are based on historical experience of the existing operations.

### Capability and Feasibility

Purchase price of \$20,295 per unit will be met with equity from each of the proposed new members. As shown on BFA Attachment B, the net worth statements of the proposed new members showing sufficient funds.

The submitted budget indicates a net income of \$54,006 during the first and third years of operation. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

Presented as BFA Attachment C, the financial summary for Hudson Valley Ambulatory Surgery, LLC indicates that the facility has maintained positive working capital and positive member's equity and generated a net income of \$394,751 for 2011. Presented as BFA Attachment D, an internal financial summary for Hudson Valley Ambulatory Surgery, LLC indicates the facility has experienced negative working capital, maintained positive member's equity and generated a net income of \$196,243 as of December 31, 2012. The applicant has stated the negative working capital is due to incomplete 2012 internal financials by the outside accountant and do not include account receivables and account payables.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Recommendation

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



## Attachments

BFA Attachment A	Membership percentages before and after DOH approval
BFA Attachment B	Net Worth Statements
BFA Attachment C	Financial Summary 2011, Hudson Valley Ambulatory Surgery, LLC
BFA Attachment D	Internal Financial Summary as of December 31, 2012, Hudson Valley Ambulatory Surgery, 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 1st day of August, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer ownership interests to eight new members to an existing multi-specialty freestanding ambulatory surgery center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

131151 E

Hudson Valley Ambulatory Surgery, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a Partnership Agreement of Family Footcare Group, LLP, acceptable to the Department. [CSL]
2. Submission of a Membership Interest Purchase Agreement, acceptable to the Department. [CSL]
3. Submission of a Unit Redemption Agreement, acceptable to the Department. [CSL]
4. Submission of documentation evidencing the reverse split of the membership units of Hudson Valley Ambulatory Surgery, LLC, acceptable to the Department. [CSL]
5. Submission of Subscription Agreements for each incoming member, acceptable to the Department. [CSL]
6. Submission of the Articles of Organization of Hudson Valley Ambulatory Surgery, LLC, acceptable to the Department. [CSL]
7. Submission of the Operating Agreement of Hudson Valley Ambulatory Surgery, LLC acceptable to the Department. [CSL]
8. Submission of an Administrative Service Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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

Barbara DelCogliano  
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 # 131243 E

## Yorkville Endoscopy Center

**County:** New York County  
**Purpose:** Establishment

**Program:** Diagnostic and Treatment Center  
**Submitted:** April 30, 2013

### Executive Summary

**Description**

Yorkville Endoscopy Center, LLC, a proprietary corporation, is seeking approval to transfer 48.23% membership interest to seven new physician members. The Center was approved as an ambulatory surgery center for a single specialty of gastroenterology by the Public Health and Health Planning Council on December 8, 2011 and began operation in February 2013.

The center will have three classes of membership. Class 1 member means any founding member or proposed member that, by the terms of the subscription agreement, has agreed to guarantee any indebtedness of the Company, and Class 2 and 3 member means any member that is not obligated by the terms of the subscription agreement to guarantee any indebtedness.

The proposed issuance of new membership interests exceeds 25% within five years, requiring Public Health and Health Planning Council approval.

The current and proposed membership interest is as shown below:

<u>Member</u>	<u>Current Membership Interest</u>	<u>Proposed Membership Interest</u>
Neville Bamji, M.D.	10.00%	11.91%
Kenneth Miller, M.D.	27.33%	11.91%
James Aisenberg, M.D.	27.33%	11.91%
Lawrence Cohen, M.D.	27.34%	11.91%
Frontier Healthcare Associates, LLC	8.00%	4.13%
Daniel Adler, M.D.	0%	11.91%
Joseph Felder, M.D.	0%	11.91%
Brian Landzberg, M.D.	0%	4.00%
William Perlow, M.D.	0%	4.00%
Leon Kavalier, M.D.	0%	11.91%
Arnon Lambroza, M.D.	0%	4.00%
Yevginia Pashinsky, MD	0%	0.50%

The members of Frontier Healthcare Associates, LLC are Oleg Gutnik, M.D. (50%) and Jordan Fowler (50%) giving them each approximately 2.065% indirect membership in Yorkville Endoscopy, LLC.

**DOH Recommendation**  
 Contingent approval

**Need Summary**  
 Because this project involves only a change in ownership arrangements, there will be no need recommendation for this application

**Program Summary**  
 Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

**Financial Summary**  
 There are no budgeted incremental operating expenses or revenues associated with this project. Patient care services will not be affected or interrupted.

Purchase price of \$68,050 for Class 1 membership, \$22,850 for Class 2 membership and \$2,850 for Class 3 membership will be financed from 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. Submission of a photocopy of applicant's fully executed Amended Operating Agreement, which is acceptable to the Department. [CSL]
2. Submission of a photocopy of Amended and Restated Articles of Organization of Frontier Healthcare Associates, LLC, with proof of filing of the same with the New York State Department of State, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 1, 2013.**

## Programmatic Analysis

### Program Description

Transfer 48.23 percent interest to seven (7) new physician members.

### Character and Competence

The new proposed members of the LLC are:

<u>Proposed</u>	<u>Percentage</u>
Daniel Adler, MD	11.91%
Joseph Felder, MD	11.91%
Leon Kavaler, MD	11.91%
Brian Landzberg, MD	4.00%
William Perlow, MD	4.00%
Arnon Lambroza, MD	4.00%
Yevginia Pashinsky, MD	0.50%

### Already Approved

Neville Bamji, MD  
Kenneth Miller, MD  
James Aisenberg, MD  
Lawrence Cohen, MD  
Frontier Healthcare Assoc. LLC  
Oleg Gutnik, MD  
Jordan Fowler

The seven proposed new members are all Board-certified or Board-eligible physicians in gastroenterology who will collectively acquire a 48.23% membership interest in the Center. Upon approval, the Center will have twelve (12) physicians and one (1) LLC member.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's 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.

Drs. Landzberg and Perlow have each disclosed one pending malpractice case.

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

### Recommendation

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

## Financial Analysis

### SUBSCRIPTION AGREEMENTS

The applicant has submitted executed supplemental subscription agreements from the proposed new members, the terms of which are summarized below:

Date: May 22, 2012  
Purpose: Purchase 11.91% membership interest (1,361 Class 1 units)  
Seller: Yorkville Endoscopy, LLC  
Purchaser: Daniel Adler, M.D., Joseph Felder, M.D., and Leon Kavalier, M.D.  
Purchase Price: \$68,050 each payable in full upon execution of the subscription agreement.

Date: May 22, 2012  
Purpose: Purchase 4.00% membership interest (460 Class 2 units)  
Seller: Yorkville Endoscopy, LLC  
Purchaser: Arnon Lambroza, M.D., Brian Landzberg, M.D. and William Perlow, M.D.  
Purchase Price: \$23,000 each  
Payment: \$4,600 deposit upon execution of the subscription agreement with the remaining \$18,400 due upon DOH approval.

Date: May 22, 2012  
Purpose: Purchase 0.50% membership interest (57 Class 3 units)  
Seller: Yorkville Endoscopy, LLC  
Purchaser: Yevgenia Pashinsky, M.D.  
Purchase Price: \$2,850 payable upon execution of the subscription agreement

Upon execution of the subscription agreement for Class 1 units the purchaser agrees to any indebtedness of the company, and the seller shall deliver to the purchaser a convertible promissory note payable to the purchaser that will convert into units upon DOH approval. Class 2 and 3 members are not obligated to guarantee any indebtedness of the company.

### Operating Budget

There are no budgeted incremental operating expenses or revenues associated with this project. Patient care services will not be affected or interrupted.

### Capability and Feasibility

There are no project costs associated with this application.

The purchase price of \$68,050 for Class 1 membership, \$22,850 for Class 2 membership and \$2,850 for Class 3 membership will be financed from proposed members' equity. Presented as BFA Attachment A is the net worth statement of the proposed members, which indicates the availability of sufficient funds.

Presented as BFA Attachment B, an internal financial summary of Yorkville Endoscopy, LLC as of May 31, 2013, indicates the facility has experienced negative working capital, negative equity and had a net loss of \$112,282. The applicant has indicated the reasons for the losses were start-up costs and the lag in payment and reimbursement from payors that are typical for a new operator.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Recommendation

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

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## Attachments

BFA Attachment A  
BFA Attachment B

Net Worth Statement  
Internal Financial Summary as of May 31, 2013, Yorkville Endoscopy,  
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 1st day of August, 2013, 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 48.23 percent interest to seven (7) new physician members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

131243 E

FACILITY/APPLICANT:

Yorkville Endoscopy Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of applicant's fully executed Amended Operating Agreement, which is acceptable to the Department. [CSL]
2. Submission of a photocopy of Amended and Restated Articles of Organization of Frontier Healthcare Associates, LLC, with proof of filing of the same with the New York State Department of State, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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

Barbara DelCogliano  
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 # 122219 E Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing

**County:** Queens County  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** November 8, 2012

### Executive Summary

#### Description

Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing (Cardiff Bay Center), a for-profit entity, proposes to be established as the new operator of Peninsula General Nursing Home Corporation d/b/a Peninsula Center for Extended Care and Rehabilitation. Peninsula Center for Extended Care and Rehabilitation is currently licensed as a not-for-profit entity that operates a 200-bed residential health care facility (RHCF) located at 50-15 Beach Channel Drive, Far Rockaway, (Queens County).

On September 19, 2011, Peninsula General Nursing Home Corporation filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code. On March 9, 2012, the court appointed Lori Lapin Jones as the Chapter 11 Trustee, which was then approved by the DOH on March 19, 2012. Since Ms. Jones' appointment as Chapter 11 Trustee for the facility, she has entered into both a receivership agreement and asset purchase agreement with Cardiff Bay Center, LLC. Also, a separate but related real estate company, Beach 50<sup>th</sup> Street, LLC, whose sole member is Joseph Brunner who is also a member of Cardiff Bay Center, LLC, will acquire the facility's property. Ownership of the operation and real estate before and after the requested change is as follows:

#### Current Operator

Peninsula General Nursing Home, Corporation d/b/a Peninsula Center for Extended Care and Rehabilitation

#### Current Realty Owner

Peninsula Hospital Center, Inc.

#### Ownership

100%

#### Proposed Operator

Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing

#### Membership

Michael Melnicke  
Joseph Brunner  
Leo Friedman

#### Ownership

37.5%  
37.5%  
25.0%

#### Proposed Realty Owner

Beach 50<sup>th</sup> Street, LLC

#### Membership

Joseph Brunner

#### Ownership

100%

One of the proposed new operators, Michael Melnicke, presently has ownership interest in the following Nursing Homes: Park House Care Center, LLC; Rockaway Care Center, LLC; Hudson View Care Center, Inc., d/b/a Regency Extended Care Center; Caton Park Nursing Home; and Sunshine Care Corporation d/b/a Hempstead Park Nursing Home. Their financial summaries are presented as BFA Attachments E through I.

#### DOH Recommendation

Contingent approval

#### Need Summary

Peninsula Center for Extended Care and Rehabilitation's occupancy was 89.4% in 2011, less than that of Queens County and the New York City region. There will be no changes in capacity as a result of this change in ownership. Cardiff Bay Center intends to improve the facility and implement outreach programs to increase occupancy.

Program Summary

No negative information has been received concerning the character and competence of the proposed members of the applicant limited liability company.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs associated with this application. The aggregate purchase price for the real property and operating assets is \$16,750,000 plus a limited set of assumed liabilities and certain cure amounts. Beach 50<sup>th</sup> Street, LLC, the applicant's landlord and its sole member, Joseph Brunner, will provide the project funding as follows: \$4,250,000 in equity from his personal resources and the remainder of the purchase price will be provided from a loan entered into by Beach 50<sup>th</sup> Street, LLC for \$12,500,000 with 10 year terms at an interest rate of 6%, which will be amortized over 20 years.

Budget:	Revenues:	\$15,186,900
	Expenses:	<u>\$14,605,085</u>
	Gain:	\$581,815

Subject to the above 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 of this application

Office of Health Systems Management

**Approval contingent upon:**

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
  - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - 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
  - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
    - Information on activities relating to a-c above; and
    - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]

3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed loan, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of an executed bill of sales agreement for the fixed and moveable equipment, that is acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an executed amendment to the applicant's operating agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed amendment to the lease agreement between Beach 50<sup>th</sup> Street, LLC and the applicant, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed certificate of amendment to the applicant's articles of organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed certificate of assumed name, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed certificate of dissolution or certificate of amendment to the certificate of incorporation of Peninsula General Nursing Home Corporation, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The operator will repair and refurbish the kitchen at Peninsula Hospital for use by the nursing home. [LTC]

2. During the period of a contracted meal service, all food and meals will be palatable and of high quality served at the appropriate temperature in accordance with federal and state codes, rules, and regulations. [LTC]
3. During the period of a contracted meal service all meals will be delivered at the appropriate times in accordance with federal and state codes, rules, and regulations. [LTC]
4. During the period of a contracted meal service satisfactory temperature controls for the storage of food will be maintained, in accordance with federal and state codes, rules, and regulations. [LTC]
5. The completion and installation of the CMS mandated sprinkler system with 100% coverage by August 13, 2013. [LTC]
6. The project must be completed within one year of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the project by the applicant and an expiration of the approval. [PMU]

Council Action Date  
**August 1, 2013.**

# Need Analysis

## Background

Peninsula Center for Extended Care and Rehabilitation, a 200 bed not-for-profit residential health care facility located at 50-15 Beach Channel Drive, Far Rockaway, 11691, in Queens County, seeks approval to establish Cardiff Bay Center, LLC as the new owner operator of Peninsula Center for Extended Care and Rehabilitation.

## Analysis

Peninsula Center for Extended Care and Rehabilitation's utilization is lower than that for Queens County as a whole and the New York City region for 2009, 2010, and 2011 as shown in Table 1 below:

**Table 1: Peninsula Center for Extended Care and Rehabilitation /Queens County/NYC Region**

<b>Facility/County/Region</b>	<b>% Occupancy 2009</b>	<b>% Occupancy 2010</b>	<b>% Occupancy 2011</b>
Peninsula Center for Extended Care	90.7%	92.7%	89.4%
Queens County	94.5%	94.8%	94.5%
NYC Region	95.0%	94.9%	94.8%

Peninsula Center for Extended Care and Rehabilitation's utilization decreased from 92.7% to 89.4% from 2010 to 2011. Cardiff Bay Center has committed to increasing utilization with plans to establish quality programming, modernize the therapy department, and create new outreach programs with hospitals in the service area.

There is currently an unmet need of 7,649 beds in the New York City region. However, occupancy remains below 97%, which means that there is a rebuttable presumption of no need.

**Table 2: RHCF Need – NYC Region**

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	43,343
<b>Beds Under Construction</b>	79
<b>Total Resources</b>	43,422
<b>Unmet Need</b>	7,649

## 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.

Peninsula Center for Extended Care and Rehabilitation was above the 75 percent planning average for 2009 but was slightly below it in 2010. The facility reported Medicaid admissions of 16.6 percent and 26.21 percent in 2009 and 2010, respectively. The 75 percent planning averages for Queens County for these years were 12.95 percent (2009) and 27.8 percent (2010).

Peninsula Center was able to remain open during the Superstorm Sandy crisis and provided beds for patients displaced from other facilities.

## Conclusion

The commitment of the proposed purchaser to implement referral and outreach programs is likely to increase the facility's recent low levels of occupancy to more optimum levels. Although RHCF bed occupancy for the New York City planning region is below the 97 percent planning optimum, Peninsula Center's level of Medicaid admissions exceeded the average for Queens County in 2009 and was only 1 percent lower in 2010. The approval of the proposed purchase will help the facility increase utilization for all patients and preserve an important community resource.

## Recommendation

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

# Programmatic Analysis

## Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Peninsula Center for Extended Care and Rehabilitation	Cardiff Bay Center for Rehabilitation and Nursing
Address	50-15 Beach Channel Drive Far Rockaway, NY. 11691	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Cardiff Bay Center, LLC Receivership	Cardiff Bay Center, LLC
	<u>Members</u> Michael Melnicke            37.5% Joseph Brunner            37.5% Leopold Friedman           25.0%	<u>Members</u> Michael Melnicke            37.5% Joseph Brunner            37.5% Leopold Friedman           25.0%

## Character and Competence

- Facilities Reviewed

- Nursing Homes

Caton Park Nursing Home	07/2003 to present
Regency Extended Care Center	07/2003 to present
Rockaway Care Center	07/2003 to present
Park Nursing Home	07/2003 to present
Hempstead Park Nursing Home	07/2003 to present

- Receiverships

Peninsula Center for Extended Care and Rehabilitation	01/2013 to present
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- Licensed Home Care Services Agency

Ultimate Care, Inc.	02/2010 to present
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- Individual Background Review

**Joseph Brunner** has been the owner and manager of Bruman Realty, LLC, a real estate development and management company located in Brooklyn, New York for the last ten years. Mr. Brunner discloses the following receivership interest in health facilities:

Peninsula Center for Extended Care and Rehabilitation	01/2013 to present
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**Michael Melnicke** is a licensed nursing home administrator in the states of New York and Connecticut and is considered to be in good standing. Mr. Melnicke previously held nursing home licenses in the states of Florida, California, and New Jersey which are currently expired. Mr. Melnicke discloses the following ownership/receivership interests:

Park Nursing Home	1/1987 to present
Rockaway Care Center	1/1992 to present
Regency Extended Care Center	1/1993 to present
Caton Park Nursing Home	1/1994 to present
Hempstead Park Nursing Home	1/1998 to present
Peninsula Center for Extended Care and Rehabilitation	01/2013 to present

**Leopold Friedman** is the Chief Executive Officer of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following ownership/receivership interests:

Peninsula Center for Extended Care and Rehabilitation	01/2013 to present
Ultimate Care, Inc.	02/2010 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of operations for Park Nursing Home for the period identified above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on May 14, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care, 10 NYCRR 415.15(b)(1)(i)&(ii) – Medical Services: Physician Services; and 10 NYCRR 415.18(a) – Pharmacy Services.

A review of the Regency Extended Care Center for the period identified above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on November 17, 2005. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care.

A review of the Hempstead Park Nursing Home for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on January 9, 2009. Deficiencies were found under 10 NYCRR 415.12 — Quality of Care.
- The facility was fined \$8,000 pursuant to a Stipulation and Order for surveillance findings on September 28, 2011. Deficiencies were found under 10 NYCRR 415.4(b) – Mistreatment/Neglect, Policies and Procedures; 10 NYCRR 415.4(b)(1)(ii) – Investigate/Report, Allegations; 10 NYCRR 415.5(g)(1)(i–xv) – Medically Related Social Services; and 10 NYCRR 415.26 – Administration.

A review of operations for the Park Nursing Home, Regency Extended Care Center, Hempstead Park Nursing Home for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for the Rockaway Care Center, Caton Park Nursing Home, and Peninsula Center for Extended Care and Rehabilitation for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care, 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. The kitchen which provided meals for the nursing home is located in the now closed adjacent Peninsula Hospital building. Flooding from Hurricane Sandy damaged the kitchen, rendering it unusable for food preparation. In order to maintain the food service for the nursing home, the receiver elected to contract with an outside vendor, which would use the facility's menus and prepare the meals accordingly. During the recertification survey in May, 2013, the facility was cited for non-palatable food, improper food temperatures, frequency of

meals, and improper food storage and temperature controls. As a condition of approval, the operator will be required to remedy the deficiencies in the food service to enhance the quality, favorability, and frequency of meals provided to the residents.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements 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 for the purchase of the operating interest, the terms of which are summarized as follows:

Date:	August 8, 2012
Seller:	Lori Lapin Jones, Chapter 11 Trustee, for Peninsula General Nursing Home Corporation d/b/a Peninsula Center for Extended Care and Rehabilitation (operations & realty)
Purchaser:	Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing - Operations
Purchased Assets	Transfer, assign, convey all title and interest in purchased assets used exclusively in the business including: real property lease, furniture and equipment, inventory, all other tangible personal property, intellectual property license, assigned contracts, documents relating to services provided, permits, Medicare and Medicaid provider numbers, goodwill and intangible assets, policy and procedure manuals, telephone and telefax numbers.
Purchase Assets- after the receivership date	Security deposits and prepayments, accounts receivables & cash generated by the business.
Excluded Assets	Cash, cash equivalents, bank deposits and all Pre-Closing Accounts Receivable, any refunds prior to the closing date, personnel files of employees not hired by purchaser, documents not permitted by law to be transferred, any right to receive or expectancy of Seller in any charitable gift, grant bequest or legacy. All other assets and properties of Seller that is subject to the real estate contract.
Assumed Liabilities-Operations:	Vacation, holiday, sick pay and personal days accrued prior to closing effective date; assume all severance obligations, assigned contracts and leases and Healthcare Program Liabilities up to \$500,000.
Purchase Price	\$16,750,000 (all has been allocated to real property by applicant)
Payment of Purchase Price:	See below

The applicant has submitted an executed asset purchase agreement for the purchase of the property, the terms of which are summarized as follows:

Date: August 8, 2012  
 Seller: Lori Lapin Jones, Chapter 11 Trustee, for Peninsula General Nursing Home Corporation d/b/a Peninsula Center for Extended Care and Rehabilitation (operations & realty)  
 Purchaser: Beach 50<sup>th</sup> Street, LLC – Property  
 Purchased Assets: Transfer, convey and assign all of the seller’s right, title and interest to certain real property and building improvements located at 50-15 Beach Channel Drive, Far Rockaway, New York along with the furniture, furnishings, fixtures, equipment and other items of personal property. All easements, rights of way, air or development rights and other rights of the sellers.  
 Purchase Price: \$16,750,000 (approximately \$16,250,000 will be allocated to the real property and approximately \$500,000 will be allocated to the fixed and moveable equipment. Over a period of five years, starting on the 2<sup>nd</sup> year, the new operator will reimburse the landlord, Beach 50<sup>th</sup> Street, LLC, \$500,000 for the fixed and moveable equipment. (see above contingency)

Payment of Purchase Price: \$1,675,000 deposit due at the signing of the agreement  
\$15,075,000 due at closing  
 \$16,750,000

The purchase agreements are consistent with the Bankruptcy Court orders.

The purchase price is proposed to be satisfied as follows:

Equity	\$ 4,250,000
Loan (6% for a 10 year term with a 20 year amortization)	<u>12,500,000</u>
Total	\$ 16,750,000

A letter of interest has been provided by Lex Debt, LLC in regards to the above noted loan. Presented as BFA Attachment A is the proposed members’ net worth summary for Beach 50<sup>th</sup> Street, LLC and Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing, which reveals sufficient resources to meet the equity requirement for the project. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, the members have provided affidavits stating that they are willing to contribute resources disproportionate to their membership interest.

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.

Peninsula General Nursing Home Corporation’s liability to New York State totaled \$5,492,257: \$5,309,793 on the Medicaid Financial Management System and \$182,465 due for the first quarter to the Health Facility Cash Assessment Program.

## Lease Agreement and Medicaid Capital Reimbursement

Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing will occupy the premise under the terms of a draft lease agreement, the terms of which are summarized as follows:

Date: December 1, 2012  
Premises: 200 Bed RHCF located at 50-15 Beach Channel Drive, Far Rockaway, NY 11691  
Owner/Landlord: Beach 50<sup>th</sup> Street, LLC  
Lessee: Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing  
Term: Forty-nine years  
Rent: \$650,000 per year (\$54,166.67 per month) with a 3% increase per year  
Provisions: Triple net lease

The lease arrangement is a non-arm's length agreement. Medicaid capital reimbursement for the proposed applicant will change from the existing not-for-profit Article 28A methodology to the proprietary reimbursement methodology of return on/of equity.

## Operating Budget

The applicant has provided an operating budget, in 2013 dollars, for the first year of operations subsequent to the change in ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid	\$221.70	\$12,636,900
Medicare	500.00	1,500,000
Private Pay & Other	350.00	<u>1,050,000</u>
Total Revenues:		\$15,186,900
Expenses:		
Operating		\$13,532,085
Capital		<u>1,073,000</u>
Total Expenses:		\$14,605,085
Net Income:		<u>\$581,815</u>
RHFC Utilization (patient days)		63,000
RHFC Occupancy		86.3%

The following is noted with respect to the submitted RHCF operating budget:

- Expenses include lease rental;
- Medicaid revenues are based on the 2013 rates;
- Medicare revenues were based upon the 2011 rates;
- Private pay revenues are based on current rates;
- Projected utilization is 86.3%.

Utilization for 2012 averaged 82.73%, while utilization for the periods from 2002 through 2011 averaged 89.31%. According to the applicant, the monthly average census from August 2012 to February 3, 2013 ranged from 162 to 181 residents, or about 81% to 90.5% occupancy. This was due in part to having residents from RHCF facilities impacted by Hurricane Sandy temporarily relocated to the facility.

For the months of March and April 2013, the occupancy dipped below 80% as the result of residents displaced by Hurricane Sandy returning to their original RHCF facilities that had been reopened. Since April 2013 the facility has experienced an increase in occupancy. As of June 14, 2013 the RHCF had 166 residents or approximately 83% occupancy, and is waiting on approval for 10 more, which will bring the occupancy percentage to a level slightly higher than the projected budget. To facilitate a continued growth in utilization, the applicant has undertaken the following steps:

- Establish a new relationship with the single remaining hospital in the facility's immediate service area, St. John's Episcopal Hospital South Shore, seeking long term care placement for the nursing-home eligible patients;
- Establish relationships with hospitals in the Nassau/Suffolk catchment area, including South Nassau Communities Hospital and Mercy Medical Center, aimed at attracting a resident population in need of lower cost placement in a facility serving a predominately Medicaid population;
- Executing contracts with managed long term care plans (MLTC), including Age Well and Fidelis to position the RHCF to meet the needs of the nursing home eligible population as it is carved into managed care.

Breakeven utilization is projected at 83.00%. RHCF utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	90.48%
Medicare Fee-for-Service	4.76%
Private/Other	4.76%

### Capability and Feasibility

There are two asset purchase agreements covering the sale of the operating assets and real property in the aggregate amount of \$16,750,000, plus a limited set of assumed liabilities and certain cure amounts. The landlord, Beach 50<sup>th</sup> Street, LLC, will fund the total purchase price as follows: its sole member Joseph Brunner will contribute \$4,250,000 from his personal resources and Beach 50<sup>th</sup> Street, LLC will enter into \$12,500,000 loan with the Lex Debt, LLC at the above stated terms. Additionally, Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing the proposed operator will reimburse Beach 50<sup>th</sup> Street, LLC \$500,000 for the moveable and fixed equipment. Review of BFA Attachment A is the members' net worth statement that shows sufficient assets for completing the acquisition.

The applicant estimates the working capital requirements at \$2,600,000, an amount slightly above the department's estimate of \$2,434,181, which was based on two months of the first year expenses. The members of Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing will contribute half or \$1,300,000 from their personal resources and the borrow the remaining balance or \$1,300,000 through a loan from Lex Debt, LLC at 6% for 5 years.

Presented as BFA Attachments B and C are the pro forma balance sheets for Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing (the operator) and Beach 50<sup>th</sup> Street, LLC (real property owner and landlord) which shows the entities will start off with equity in the amounts of \$2,025,000 and \$4,750,000, respectively

The submitted budget indicates that net income of \$581,815 would be generated in the first year after change in ownership. The following is a comparison of 2011 historical and projected revenue and expense:

Projected Income	\$ 15,186,900
Projected Expense	<u>14,605,085</u>
Projected Net Income	\$581,815
Annual 2011 Income	\$19,929,866
Annual 2011 Other Income	173,418
Annual 2011 Expense	<u>25,393,085</u>
Annual 2011 Net Income (Loss)	(\$5,289,801)
Incremental Net Income (Loss)	<u>\$5,871,616</u>

The \$4,916,384 decline in projected income comes from the following: \$1,833,506 from the elimination of the Adult Day Care Program and related outpatient charges, and \$173,418 reduction in other income as the results of eliminating various sold and rental services. The balance of \$2,909,460 stems from anticipated realignment in payer mix, a reduction of 2,281 patient days, and a reduction in the following payer rates; \$44.50 decline in the daily Medicaid rate, going from \$266.20 to \$221.70 per day; \$41.63 decline in the daily Medicare rate, going from \$541.63 to \$500.00 per day; \$69.73 decline in the Private

pay rate, going from \$419.73 to \$350.00 per day. It is estimated Medicaid utilization will increase from 81.39% to 90.48% and Medicare will decline from 8.63% to 4.76%.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a statewide 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.

In summary, expenses are expected to decline from an average of \$388.98 per patient day under Peninsula General Nursing Home to approximately \$231.83 per patient day for the first year. The Department reviewed the average patient day cost for the five RHCF presented under BFA Attachments E through I and found that over a three year period the five RHCFs had an average patient day cost of \$221.41, thus concluding that the projected first year budget appeared reasonable. The expenses are expected to decline by \$10,788,214, with salary and wages projected to decrease by \$4,921,339 on a net reduction of 45.82 full time equivalents (FTE). Employee benefits are expected to decline \$2,818,063, going from 47.4% of wages to 38.6% on fewer labor dollars. The balance of savings will come from the reduction in purchased services and other direct expenses.

As shown on BFA Attachment E, Park House Care Center, LLC had an average negative working capital position, a negative net asset position, and average net loss for the periods 2010 through 2012. The \$439,630 loss in 2011 was primarily due to a net reduction in the Medicaid rate, which totaled to approximately \$556,130 for the year. The loss in 2010 was amplified by a \$721,000 reduction in the Medicaid rate for the period of time relatedly to portions of 2009 and 2010. For the year ending 2012 Park House Care Center generated an operating surplus of \$435,517. The facility reduced its average daily cost per patient day by \$5.96 or going from a \$176.99 average cost per patient day in 2011 to a \$171.03 average cost per patient day in 2012, thus saving approximately \$407,235 on a comparable number of patient days. The average occupancy from 2010 through 2012 was 96.60%.

As shown on BFA Attachment F, Rockaway Care Center, LLC, for the period from 2010 through 2012, had an average negative working capital position, a positive average net asset position, and generated an average operating surplus of \$692,097. The average occupancy for the period was 84.70%.

As shown on BFA Attachment G, Hudson View Care Center, Inc. d/b/a Regency Extended Care Center, for the period from 2010 through November 30, 2012, had an average negative working capital position, a net asset position that turned to a positive \$1,035,283 in 2012, and generated an average operating surplus of \$2,888,115. The average occupancy for the period 2010 - November 30, 2012 was 98.38%.

As shown on BFA Attachment H, Caton Park Nursing Home, for the period from 2010 through November 30, 2012, had a positive working capital position, a positive net asset position and generated an average operating surplus of \$346,619. The average occupancy for the period 2010-November 30, 2012 was 96.92%.

As shown on BFA Attachment I, Sunshine Care Corporation d/b/a Hempstead Park Nursing Home, for the period from 2010 through September 30, 2102, had a negative working capital position, a negative net asset position, and generated an average operating surplus of \$211,282. The average occupancy for the period 2010 through September 30, 2102 was 90.67%.

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

Recommendation

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

## Attachments

BFA Attachment A	Net Worth of Proposed Members, Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing
BFA Attachment B	Pro-forma Balance Sheet, Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing
BFA Attachment C	Pro-forma Balance Sheet, Beach 50 <sup>th</sup> Street, LLC
BFA Attachment D	Financial Summary, Peninsula General Nursing Home Corporation d/b/a Peninsula Center for Extended Care and Rehabilitation
BFA Attachment E	Financial Summary, Park House Care Center, LLC
BFA Attachment F	Financial Summary, Rockaway Care Center, LLC
BFA Attachment G	Financial Summary, Hudson View Care Center, Inc. d/b/a Regency Extended Care Center
BFA Attachment H	Financial Summary, Caton Park Nursing Home
BFA Attachment I	Financial Summary, Sunshine Care Corporation d/b/a Hempstead Park Nursing Home

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 1st day of August, 2013, 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 Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing as the new operator of Peninsula Center for Extended Care and Rehabilitation, 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:

122219 E

FACILITY/APPLICANT:

Cardiff Bay Center, LLC d/b/a Cardiff Bay  
Center for Rehabilitation and Nursing



## 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 continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
  - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - 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
  - Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
    - Information on activities relating to a-c above; and
    - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
6. Submission of an original affidavit from the applicant members (or stockholders or partners) making a commitment to personally fund the balloon payment on the proposed loan, should terms acceptable to the Department of Health be unavailable at the time of refinancing. [BFA]
7. Submission of an executed bill of sales agreement for the fixed and moveable equipment, that is acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an executed amendment to the applicant's operating agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed amendment to the lease agreement between Beach 50<sup>th</sup> Street, LLC and the applicant, acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed certificate of amendment to the applicant's articles of organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed certificate of assumed name, acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed certificate of dissolution or certificate of amendment to the certificate of incorporation of Peninsula General Nursing Home Corporation, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The operator will repair and refurbish the kitchen at Peninsula Hospital for use by the nursing home. [LTC]
2. During the period of a contracted meal service, all food and meals will be palatable and of high quality served at the appropriate temperature in accordance with federal and state codes, rules, and regulations. [LTC]
3. During the period of a contracted meal service all meals will be delivered at the appropriate times in accordance with federal and state codes, rules, and regulations. [LTC]
4. During the period of a contracted meal service satisfactory temperature controls for the storage of food will be maintained, in accordance with federal and state codes, rules, and regulations. [LTC]
5. The completion and installation of the CMS mandated sprinkler system with 100% coverage by August 13, 2013. [LTC]
6. The project must be completed within one year of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the project by the applicant and an expiration of the approval. [PMU]

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

Barbara DeICogliano  
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 # 131020 E**  
**Providence Care, Inc. d/b/a Providence Care Nursing and Rehabilitation Center**

**County: Kings County**  
**Purpose: Establishment**

**Program: Residential Health Care Facility**  
**Submitted: January 10, 2013**

## Executive Summary

### Description

Providence Care, Inc., a not-for-profit corporation, requests approval to be established as the operator of Bishop Henry B. Hucles Episcopal Nursing Home, a 240-bed skilled nursing facility and 30 slot adult day health care program located at 835 Herkimer Street, Brooklyn, New York. After the change in operator, the nursing home will be named Providence Care Nursing and Rehabilitation Center. The applicant will also purchase the real estate as part of this application. There will be no change in services provided.

The applicant entered into a purchase agreement, dated August 24, 2012, with Bishop Henry B. Hucles Episcopal Nursing Home, Inc. to purchase the operating assets, including the property, related to the nursing home.

The current and proposed operator of Providence Care Nursing and Rehabilitation Center is as follows:

<u>CURRENT</u>	<u>PROPOSED</u>
Bishop Henry B. Hucles Episcopal Nursing Home, Inc.	Providence Care, Inc.

DOH Recommendation  
Contingent Approval

### Need Summary

Utilization at Bishop Henry B. Hucles Episcopal Nursing Home declined from 96.1% to 91.8% from 2009 to 2011. Providence Care intends to increase utilization by instituting new programming and outreach. There will be no changes to beds or services through this transaction.

### Program Summary

No negative information has been received concerning the character and competence of the Board of Directors of the applicant not-for-profit corporation.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

### Financial Summary

The purchase price of \$29,500,000 will be met as follows: Bank Loan of \$5,089,002 (4.50% interest rate for a 15 year term); Cash Deposit in escrow \$910,998 via a subvention loan from an affiliated not-for-profit entity of Providence Foundation, Inc. at a 0% interest rate and Assumption of DASNY debt of \$23,500,000.

### Budget:

Revenues	\$24,694,077
Expenses	<u>24,468,022</u>
Excess of Revenues over Expenses	\$ 226,055

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.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

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 continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
  - d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
    - Information on activities relating to a-c above; and
    - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. (RNR)

3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

**Approval conditional upon:**

1. In the interest of maintaining sufficient and qualified experience on the governing board of Providence Care, Inc., the Board of Directors for Providence Care, Inc. must retain at least one (1) member with a minimum of five (5) years demonstrated experience as an operator of a nursing home. [LTC]
2. The project must be completed within one year of Public Health and Health Planning Council's recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application and an expiration of the approval. [PMU]

Council Action Date

**August 1, 2013.**

# Need Analysis

## Project Description

Providence Care, Inc., a non-profit corporation, seeks approval to be established as the new operator of Bishop Henry B. Hucles Episcopal Nursing Home, a 240-bed residential health care facility that includes an adult day health care program, located at 835 Herkimer Street, Brooklyn, in Kings County.

## Analysis

Utilization for Bishop Henry B. Hucles Episcopal Nursing Home was higher than for Kings County for 2009, equivalent in 2010, and below in 2011 as shown in Table 1 below:

**Table 1: RHCF – Bishop Henry B. Hucles Episcopal Nursing Home/Kings County/NYC Region**

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
Bishop Henry B. Hucles Episcopal	96.1%	93.6%	91.8%
Kings County	93.7%	93.6%	94.6%
NYC Region	95.0%	94.9%	94.8%

Bishop Henry B. Hucles Episcopal Nursing Home had utilization just below the department's 97% planning optimum. To help increase utilization, the new owner/operators plan to implement an outreach program that will work with area sources, who in turn will work on placing residents in the facility.

**Table 2: RHCF Need – NYC Region**

2016 Projected Need	51,071
Current Beds	43,065
Beds Under Construction	349
Total Resources	43,065
Unmet Need	7,657

## 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.

Bishop Henry B. Hucles Episcopal Nursing Home was above the 75 percent planning average for 2009 and 2010. The facility reported Medicaid admissions of 24.05 percent and 50.53 percent in 2009 and 2010 respectively. The 75 percent planning averages for Kings County for those years were 14.97 percent (2009) and 27.2 percent (2010).

## Conclusion

Approval of this application will help the community retain a needed RHCF resource for area residents. Therefore, approval is recommended.

## Recommendation

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

## Programmatic Analysis

### Facility Information:

	EXISTING	PROPOSED
Facility Name	Bishop Henry B. Hucles Episcopal Nursing Home	Providence Care Nursing and Rehabilitation Center
Address	835 Herkimer Street Brooklyn, NY 11233	Same
RHCF Capacity	240	Same
ADHC Program Capacity	30	Same
Type of Operator	Voluntary	Voluntary
Class of Operator	Corporation	Corporation
Operator	Bishop Henry B. Hucles Episcopal Nursing Home, Inc.	Providence Care, Inc.  Board of Directors: Michael Melnicke Israel Melnicke Matthew Melnicke Stephen Greenwald Leopold Friedman Lamuel Stanislaus

### Establishment/Construction Information

#### A. ESTABLISHMENT APPLICATION REVIEW

#### 1. Character and Competence - Background

- Facilities Reviewed

##### Nursing Homes

Park Nursing Home	07/2003 to present
Rockaway Care Center	07/2003 to present
Regency Extended Care Center	07/2003 to present
Caton Park Nursing Home	07/2003 to present
Hempstead Park Nursing Home	07/2003 to present

##### Nursing Homes in Receivership

Peninsula Center for Extended Care and Rehabilitation	01/2013 to present
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##### Licensed Home Care Services Agency (LHCSA)

Ultimate Care, Inc.	02/2010 to present
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- Individual Background Review

**Michael Melnicke** is a licensed nursing home administrator in the states of New York and Connecticut and is considered to be in good standing. Mr. Melnicke previously held nursing home licenses in the states of Florida, California, and New Jersey which are currently expired. Mr. Melnicke serves as the president of Providence Foundation, Inc., a not-for-profit corporation, which will provide funds to Providence Care, Inc. Mr. Melnicke discloses the following ownership/receivership interests:

Park Nursing Home	1987 to present
Rockaway Care Center	1992 to present
Regency Extended Care Center	1993 to present
Caton Park Nursing Home	1994 to present
Hempstead Park Nursing Home	1998 to present
Peninsula Center for Extended Care and Rehabilitation	01/2013 to present

**Israel Melnicke** is currently employed as the Assistant Administrator at Rockaway Care Center. Mr. Melnicke is a licensed nursing home administrator in good standing and a licensed paramedic in good standing. He discloses no health facility ownership interests.

**Matthew Melnicke** is a licensed paramedic in good standing. He is also the owner/operator of Advanced Care Staffing, Inc., a healthcare staffing agency, and Ultimate Care, Inc., a licensed home care services agency. Matthew Melnicke discloses the following ownership interest:

Ultimate Care, Inc.	02/2010 to present
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**Stephen Greenwald** is a NYS licensed attorney in good standing. He is also the managing director at G&H Media, a consulting company based in New York City. Stephen Greenwald discloses no health facility ownership interests.

**Leopold Friedman** is the Chief Executive Officer of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following receivership interest:

Peninsula Center for Extended Care and Rehabilitation	01/2013 to present
Ultimate Care, Inc.	02/2010 to present

**Lamuel Stanislaus** is a retired dentist. Following his retirement as a dentist, he was employed by the United Nations as Grenada's Ambassador Extraordinary and Plenipotentiary Representative from 1985 to 2004. Mr. Stanislaus discloses no health facility ownership interests.

## 2. Character and Competence - Analysis:

No negative information has been received concerning the character and competence of the applicants.

A review of operations for Park Nursing Home for the period identified above reveals that the facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on May 14, 2008. Deficiencies were found under 10 NYCRR 415.12 - Quality of Care, 10 NYCRR 415.15(b)(1)(i)&(ii) – Medical Services: Physician Services; and 10 NYCRR 415.18(a) – Pharmacy Services

A review of the Regency Extended Care Center for the period identified above reveals that the facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on November 17, 2005. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care.

A review of the Hempstead Park Nursing Home for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on January 9, 2009. Deficiencies were found under 10 NYCRR 415.12 — Quality of Care.
- The facility was fined \$8,000 pursuant to a Stipulation and Order for surveillance findings on September 28, 2011. Deficiencies were found under 10 NYCRR 415.4(b) – Mistreatment/Neglect, Policies and Procedures; 10 NYCRR 415.4(b)(1)(ii) – Investigate/Report, Allegations; 10 NYCRR 415.5(g)(1)(i–xv) – Medically Related Social Services; and 10 NYCRR 415.26 – Administration.

A review of operations for the Park Nursing Home, Regency Extended Care Center and Hempstead Park Nursing Home for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for the Rockaway Care Center, Caton Park Nursing Home, and Peninsula Center for Extended Care and Rehabilitation for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care, 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 applicant has entered into an executed asset purchase agreement, which is summarized below:

Date:	August 24, 2012
Seller:	Bishop Henry B. Hucles Episcopal Nursing Home, Inc.
Purchaser:	Providence Care, Inc.
Assets Acquired:	The Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall acquire, all of Seller's right, title and interest in and to the Assets, to the extent assignable and as such Assets shall exist at the Effective Time. The Personal Property shall be sold, assigned, transferred, conveyed and delivered to Buyer free and clear of all liens, claims, assessments, security interests, mortgages, collateral assignments, leases, attachments, charges and other encumbrances. The Real Property shall be sold, assigned, transferred, conveyed and delivered to Buyer free and clear of all liens.
Excluded Assets:	The Seller shall retain the following assets: Accounts Receivable arising out of the operation of the Facility prior to the Contract Date and not yet reflected as of the Closing Date; all right, title and interest in and to the name "Bishop Hucles" and any other trademarks or trade names, whether registered or not, owned, used or licensed by Seller or an Affiliate; all of Seller's or Affiliate of Seller's proprietary manuals, marketing materials, policy and procedure manuals, standard operating procedures and marketing brochures, data and studies or analyses except to the extent they are used, without the name "Bishop Hucles" or "Episcopal Health Services" or in any manner that implies that the Facility continue to be affiliated with Episcopal Health Services; all claims, rights, interests and proceeds with respect to state or local tax refunds; all of Seller's Corporate record books and minute books relating to periods prior to the Contract Date; all unclaimed property of any third party, including, without limitation, property which is subject to applicable escheat laws, relating to periods prior to the Contract Date; all claims, rights, interests and proceeds (whether received in cash or by credit to amounts otherwise due to a third party) with respect to periods prior to the Contract Date, and any payments, awards or other proceeds resulting therefrom; all writings and other items that are protected from discovery by the attorney client privilege; all retroactive rate increases and/or lump sum payments resulting from rate appeals, audits or otherwise with respect to third



party payments; all proceeds of any appeal relating to services rendered by the appropriate payor on or after the Contract Date; all relics, religious art and other objects of religious significance; all donations and bequests to Seller or to "Henry B. Hucles Episcopal Nursing Home" whether made prior to or after the Effective Time and the following assets set forth on Seller's Contract Balance Sheet: Assets Limited to Use- Current; Other Assets and Assets Limited to Use- Non Current.

Assumed Liabilities: The Purchaser will assume the following liabilities; the assumed contracts, including without limitation those Leases that are assumed contracts, but only to the extent they required consents to assignment of the Assumed Contracts have been obtained and further only to the extent of the obligations arising thereunder with respect to events or periods on or after the Closing Date; all unpaid real and personal property taxes and open assessments, if any, that are attributable to the Assets and which arise prior to the Effective Time, but with respect to those arising prior to the Contract Date; all liabilities in respect of utilities being furnished to the Facility prior to the Effective Time, but with respect to those arising prior to the Contract Date only to the extent such amounts are reflected on the Contract Date Balance Sheet; all PTO of transferred employees as of the Effective Date, with respect to those arising prior to the Contract Date; accounts payable of Seller relating to the operation of the Facility prior to the Effective Time, but with respect to those payables arising prior to the Contract Date and working capital loans.

Purchase Price: \$29,500,000  
 Payment of Purchase Price: Cash at Closing

The applicant submitted an affidavit, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding liabilities.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator, which is summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$253.13	\$18,103,957
Medicare Fee-for-Service	560.82	2,452,080
Commercial Managed Care	486.93	1,593,240
Private Pay	396.04	499,800
ADHCP		1,814,000
Other Operating		<u>231,000</u>
Total Revenues		\$24,694,077
Expenses:		
Operating		\$20,467,008
Capital		<u>4,001,014</u>
Total Expenses		\$24,468,022
Excess of Revenues over Expenses		\$226,055

Utilization: (patient days)	80,379
Occupancy	91.76%
ADHCP (visits)	8,053
Breakeven Occupancy	90.84%

Occupancy and payor source breakdown are projected at the 2011 levels. Currently, occupancy was 97.10% through May 29, 2013. Utilization broken down by payor source during the first year subsequent to the change in operator for the nursing facility beds is as follows:

Medicaid Managed Care	88.98%
Medicare Fee-for-Service	5.38%
Commercial Managed Care	4.07%
Private Pay	1.57%

Utilization by payor source for the ADHCP will be 100% Medicaid.

The applicant projected changes in the following areas:

- Administrative and financial services were reduced from \$1,070,604 to \$602,442. The new administrator for the facility will be hired at a competitive but lower rate than the current Administrator and 3 FTEs will be reduced from the staffing in administration and financial offices.
- Administrative services are being reduced from \$1,229,497 to \$28,500. The current operator currently has several management and consulting services agreements that will not be renewed upon the change in ownership. The Episcopal Health System requires a system-wide audit and the Ernst and Young expense of \$98,000 is the allocation of the overall contract to Bishop Hucles. This will be replaced by the \$28,500 purchased services expense, which is in line with the norm for a nursing home audit.
- Expenses decreased from \$2,802,046 to \$1,774,212 due to reductions to corporate allocated administrative costs as the facility will no longer be affiliated with Episcopal Health Services and their overhead will no longer be applied to the facility.

Other operating revenues consist of the following; vendor machine commissions; medical records abstract fees; cellular antenna rental; adult day care meal program; contributions; gift shop/barber and beauty shop; utility rebates and investment income.

#### Capability and Feasibility

The purchase price of \$29,500,000 will be met as follows: Cash Deposit in escrow of \$910,998 via a loan from an affiliated not-for-profit entity of Providence Foundation, Inc.; Assumption of DASNY bonds of \$23,500,000 and a Bank Loan (4.50% interest rate for a 15 year term) of \$5,089,002.

Working capital requirements are estimated at \$4,078,003, which appears reasonable based on two months of first year expenses. The applicant will finance \$2,039,001 at an interest rate based on the Wall Street Journal Prime Rate, plus 1% with a rate floor of 5% (approximately 6.00% as of May 3, 2013). The remainder, \$2,039,002, will be provided in the form of a subvention agreement loan by Providence Foundation, Inc. Presented as BFA Attachment D, is the May 31, 2013 internal financial statements of Providence Foundation, Inc., which shows adequate funds to provide the loan.

Presented as BFA Attachment C, is the pro-forma balance sheet of Providence Care Nursing and Rehabilitation as of the first day of the change in operator, which indicates a net asset position of \$0 as of the first day of operation.

The submitted budget indicates an excess of revenues over expenses of \$226,055 during the first year subsequent to the change in operator. Revenues are based on the current reimbursement methodologies. 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. 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 impact.

Presented as BFA Attachment A is the financial summary for Bishop Henry B. Hucles Episcopal Nursing Home from 2009 through 2011. As shown on Attachment A, the facility had an average negative working capital position and an average negative net asset position. Also, the facility incurred an average excess of expenses over revenues of \$1,703,000 from 2009 through 2011. The applicant has indicated that the reasons for the losses are continued cost pressure, particularly in regard to union/labor benefit contract increases, and substantial cuts in Medicaid reimbursement. The applicant implemented the following steps to improve operations: increasing the acuity of resident base through Medicare patients requiring rehabilitation, increasing the overall patient census and occupancy of the facility, and the renegotiation of collective bargaining agreements associated with union labor.

Presented as BFA Attachment B, is the November 30, 2012 internal financial statements (income statement) of Bishop Hucles Nursing Home. As shown, the facility had an excess of operating revenues over expenses of (\$3,426,000) through November 30, 2012. The applicant has indicated that the operating losses were the result of the following: continued cost pressure, particularly with regard to union labor/benefit contract increases; substantial cuts in Medicaid reimbursement, which represented the largest payor; improvements designed to generate additional operating revenue focused on increasing the acuity of the resident base through Medicare patients requiring rehabilitation; and increasing the overall patient census and occupancy of the facility. Improvements additionally focused on further cost discipline, including renegotiation of collective bargaining agreement terms associated with union labor.

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- Bishop Hucles Nursing Home
BFA Attachment B	Financial Summary- November 30, 2012 internal income statement of Bishop Hucles Nursing Home
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary- Providence Foundation, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 1st day of August, 2013, 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 Providence Care, Inc. d/b/a Providence Care Nursing and Rehabilitation Center as the new operator of Bishop B. Hucles Episcopal Nursing Home, a 240 bed skilled nursing facility and 30 slot adult day health care program, 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:

131020 E

FACILITY/APPLICANT:

Providence Care, Inc. d/b/a Providence Care  
Nursing and Rehabilitation Center

#### 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 continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
  - d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
    - Information on activities relating to a-c above; and
    - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
    - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. (RNR)
3. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

#### APPROVAL CONDITIONAL UPON:

1. In the interest of maintaining sufficient and qualified experience on the governing board of Providence Care, Inc., the Board of Directors for Providence Care, Inc. must retain at least one (1) member with a minimum of five (5) years demonstrated experience as an operator of a nursing home. [LTC]
2. The project must be completed within one year of Public Health and Health Planning Council's recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application and an expiration of the approval. [PMU]

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

Barbara DelCogliano  
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 # 131153 E Oasis Rehabilitation and Nursing, LLC

**County:** Suffolk County  
**Purpose:** Establishment

**Program:** Residential Health Care Facility  
**Submitted:** March 20, 2013

### Executive Summary

#### Description

Oasis Rehabilitation and Nursing, LLC, a proposed limited liability company, requests approval to be established as the operator of Cedar Lodge Nursing Home, a 100-bed skilled nursing facility located at 6 Frowein Road, Center Moriches, New York. A related company, 6 Frowein Road, LLC, closed on its purchase of the nursing home real estate on December 27, 2012, and currently leases the nursing home to the Seller. Upon closing of the Asset Purchase Agreement, the Seller will transfer its interest as tenant in the lease to the buyer.

The proposed members of Oasis Rehabilitation and Nursing, LLC are as follows:

Issac Laufer	50%
Max Lebowitz	25%
Chaim Lebowitz	25%

DOH Recommendation  
Contingent approval.

#### Need Summary

The change in ownership will not result in any change in capacity. Cedar Lodge's utilization was 91.3% in 2009, 87.1% in 2010, and 89.8% in 2011, which is partially attributed to a lack of community outreach programs and non-existent referrals.

#### Program Summary

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

No changes in the program or physical environment are proposed in this application. No administrative

services or consulting agreements are proposed in this application.

The facility is in compliance with CMS 2013 sprinkler mandates.

#### Financial Summary

The purchase price for the operation is \$4,750,000 and will be met as follows: Equity (proposed members) of \$1,194,000 and a bank loan of \$3,556,000 at an interest rate of 5.60% for a term of 10 years with a 20 year amortization.

#### Budget:

Revenues	\$10,260,101
Expenses	<u>9,799,388</u>
Net Income	\$460,713

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

Health Systems Agency

There will be no HSA review of this project.

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 continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners 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
  - 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
    - Documentation pertaining to the number of referrals and the number of Medicaid admissions
    - 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. The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended. [BFA]
4. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
5. Submission of an executed and notarized CON Schedule 4B Medicaid Affidavit, which is acceptable to the Department. [CSL]
6. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization or Certificate of Dissolution of Kenneth Gaul II, LLC, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year of the Public Health and Health Planning Council's recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the project by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 1, 2013.**



# Need Analysis

## Background

Oasis Rehabilitation and Nursing, LLC seeks approval to enter into an asset purchase agreement for Cedar Lodge Nursing Home, a 100 bed Article 28 residential health care facility located at 6 Frowein Road, Center Moriches, 11934, in Suffolk County.

There is currently a need for 1,353 beds in the Long Island region as indicated in Table 1 below. The average occupancy for Long Island is 92.3% as indicated in Table 2.

***Table 1: RHCN Need – Long Island Region***

2016 Projected Need	16,962
Current Beds	16,000
Beds Under Construction	-391
Total Resources	16,571
Unmet Need	1,353

Cedar Lodge Nursing Home's utilization was 91.3% in 2009, 87.1% in 2010, and 89.8% in 2011. To increase occupancy Oasis Rehabilitation and Nursing has committed to increasing utilization with plans to establish referral group relationships, create outreach programs, and develop a rehabilitation program.

***Table 2: Cedar Lodge Nursing Home /Suffolk County/ Long Island Region Occupancy***

<i>Facility/County/Region</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
Cedar Lodge Nursing Home	91.3%	87.1%	89.8%
Suffolk County	95.4%	94.3%	93.1%
Long Island Region	94.8%	93.4%	92.3%

## 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.

Cedar Lodge Nursing Home Medicaid admissions of 31.9% in 2009 and 44.6% in 2010 exceeded the Suffolk County 75% rates of 11.12% in 2009 and 20.26% in 2010.

## Conclusion

The commitment of the proposed purchaser to implement referral, outreach and rehabilitation programs at Cedar Lodge is likely to raise the facility's recent low levels of occupancy to more optimum levels. Although RHCN bed occupancy for the Nassau-Suffolk planning region is well below the 97 percent planning optimum, Cedar Lodge's level of Medicaid admissions exceeds by a considerable margin the average for Suffolk County as a whole. Therefore, approval of the proposed purchase will both help move the facility toward fuller, more efficient utilization and preserve an important source of RHCN care for Medicaid clients in the service area.

## Recommendation

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

# Programmatic Analysis

## Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Cedar Lodge Nursing Home	Oasis Rehabilitation and Nursing, LLC
Address	6 Frowein Road Center Moriches, New York 11934	Same
RHCF Capacity	100	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Kenneth Gaul II, LLC	Oasis Rehabilitation and Nursing, LLC
	Sole Member & Manager: Kenneth Gaul	Members: Issac Laufer            50.0% Max Lebowitz           25.0% Chaim Lebowitz        25.0%

## Character and Competence

### Facilities Reviewed

#### Nursing Homes

Glen Cove Center for Nursing and Rehabilitation	05/2003 to present
Lynbrook Restorative Therapy and Nursing	01/2011 to present
Marquis Rehabilitation and Nursing Center	05/2003 to present
Momentum at South Bay for Rehabilitation and Nursing	11/2010 to present
North Westchester Restorative Therapy and Nursing Center	01/2006 to present
Sutton Park Center for Nursing and Rehabilitation	05/2003 to present

### Individual Background Review

**Issac Laufer** is concurrently employed as the Director of the Long Island Care Center, Marquis Rehabilitation and Nursing Center, Glen Cove Center for Nursing and Rehabilitation, and Sutton Park Center for Nursing and Rehabilitation. He is also employed as the Executive Director of the North Westchester Restorative Therapy and Nursing Center, Lynbrook Restorative Therapy and Nursing, and Momentum at South Bay for Rehabilitation and Nursing. Mr. Laufer discloses the following health facility interests:

Glen Cove Center for Nursing and Rehabilitation	03/1998 to present
Lynbrook Restorative Therapy and Nursing	01/2011 to present
Marquis Rehabilitation and Nursing Center	03/1998 to present
Momentum at South Bay for Rehabilitation and Nursing	11/2010 to present
North Westchester Restorative Therapy and Nursing Center	01/2006 to present
Sutton Park Center for Nursing and Rehabilitation	01/1998 to present

**Max Lebowitz** has been the owner of Mochan Painting Supplies of Brooklyn, Inc. since 1979. Mr. Lebowitz discloses ownership interests in the following health care facilities:

North Westchester Restorative Therapy and Nursing Center	01/2011 to present
Lynbrook Restorative Therapy and Nursing	01/2011 to present
Momentum at South Bay for Rehabilitation and Nursing	11/2010 to present

**Chaim Lebowitz** lists current employment as the owner/manager of Git Leb, LLC, since March 2000. Git Leb, LLC is a real estate and construction company located in Brooklyn, New York. Mr. Chaim Lebowitz discloses ownership interests in the following health care facilities:

Lynbrook Restorative Therapy and Nursing	01/2011 to present
Momentum at South Bay for Rehabilitation and Nursing	01/2011 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 **Glen Cove Center for Nursing and Rehabilitation** for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order issued October 27, 2005 for surveillance findings on February 15, 2005. Deficiencies were found under 10 NYCRR 415.1 1 (c)(3)(i) - Resident Assessment and Care Planning: Comprehensive Care Plans.

A review of **Sutton Park Center for Nursing and Rehabilitation** for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued August 20, 2007 for surveillance findings on November 29, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 28, 2009 for surveillance findings on September 26, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued April 30, 2010 for surveillance findings on June 18, 2009. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.27 Quality Assessment and Assurance.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued October 19, 2010 for surveillance findings on October 7, 2009. Deficiencies were found under 10 NYCRR 415 Quality of Care.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued May 24, 2011 for surveillance findings on January 19, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sores.

A review of operations for Lynbrook Restorative Therapy and Nursing, Marquis Rehabilitation and Nursing Center, Momentum at South Bay for Rehabilitation and Nursing, and North Westchester Restorative Therapy and Nursing Center for the periods identified above, results in a conclusion of substantially consistent high level of care, since there were no enforcements.

A review of operations for the Glen Cove Center for Nursing and Rehabilitation, and Sutton 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.

Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operation, which is summarized below:

Date: February 6, 2013

Purchaser: Cedar Lodge Center, LLC

Seller: Kenneth Gaul II, LLC d/b/a Cedar Lodge Nursing Home

Assets Acquired: The purchaser shall purchase the following assets: business and operation of the Facility, except for the Excluded Assets; to the extent assignable, all licenses and permits held or owned by Seller relating to the ownership or operation of the Facility and the Basic Assets; all inventory, supplies and other articles of personal property; all contracts, agreements, leases and other arrangements to the extent assumed by Buyer in accordance with the terms of this agreement; resident funds held in trust; the name "Cedar Lodge Nursing Home" including any and all other trade names, logos, trademarks and service marks associated with the Facility and the Basic Assets; all security deposits and prepayments to the extent useable by Buyer, if any, for future services held by Seller; all menus, policies and procedure manuals and computer software; all telephone numbers and fax numbers used by the Facility; copies of all financial books and records in Seller's possession relating to the Facility; all current resident/patient records relating to the Facility; all current employee and payroll records relating to the Facility and all plans hereinafter mentioned.

Excluded Assets: The personal property; all cash, deposits and cash equivalents; all marketable securities and accrued interest and dividends thereon; the accounts receivable for services provided prior to the Effective Date and proceeds if any appeals relating to periods prior to the Effective Date which may be paid by the appropriate payor after the Effective Date and all retroactive rate increases, resulting from rate appeals, audits or otherwise, with respect to third party payments from any source which may be paid after the Effective Date for services rendered by the Facility prior to the Effective Date.

Assumed Liabilities: Buyer shall assume at the Closing the ongoing obligations of Seller arising and after the Closing Date with respect to the Basic Assets, including but not limited to the Collective Bargaining Agreement hereinafter defined.

Excluded Liabilities: Seller's accounts payable relating to periods prior to the Closing; taxes, interest and penalties, if any, decent payable by Seller for periods prior to Closing; professional liability claims for acts or omissions of Seller of any of its officers, directors, employees, agents or representatives or other tort claims asserted against Seller, claims for breach of contract, or any claims of any kind asserted by patients, former patients, employees and former employees of Seller or any other party that are based on acts or omissions prior to the Closing Date and any and all overpayments and liabilities due to Medicare, Medicaid or any other health care reimbursement or payment intermediary with respect to services provided to the Facility prior to the Effective Date.

Purchase Price: The consideration to be paid by Buyer to Seller for the property and the Basic Assets to be sold hereunder and to be paid by the Buyer to Seller is \$4,750,000

Payment of Purchase Price: Cash at Closing

The applicant has submitted an affidavit, which is acceptable to the Department of Health, 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 liabilities.

**Lease Rental Agreement**

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

Date: March 19, 2013  
 Lessor: 6 Frowein Road, LLC  
 Lessee: Oasis Rehabilitation and Nursing, LLC  
 Term: 20 years  
 Rental: The Basic Annual Rent is \$492,000 per annum, subject to a 3% increase per annum.

The members of 6 Frowein Road, LLC are identical to the ownership of Oasis Rehabilitation and Nursing, LLC.

**Operating Budget**

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator, summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
Revenues:		
Medicaid Managed Care	\$231.31	\$5,224,300
Medicare Fee-for-Service	550.61	3,292,100
Private Pay	374.99	<u>1,743,701</u>
Total Revenues		\$10,260,101
Expenses:		
Operating	\$268.86	\$8,924,700
Capital	<u>26.34</u>	<u>874,688</u>
Total Expenses	\$295.20	\$9,799,388
Net Income		\$460,713
Utilization: (patient days)		33,195
Occupancy		91.00%

Utilization broken down by payor source during the first year subsequent to the change in operator is as follows:

Medicaid Managed Care	68.00%
Medicare Fee-for-Service	18.00%
Private Pay	14.00%

Payor Mix and utilization assumptions are based on the historical experience for the facility from January 1, 2013, through April 30, 2013. Revenue increases are based on Medicare and Private Pay utilization increasing from historical experience. Expense assumptions are based on the historical experience of the facility.

**Capability and Feasibility**

The purchase price for the acquisition of the operating interests is \$4,750,000 and will be financed as follows: Equity (proposed members) of \$1,194,000 and a bank loan of \$3,556,000 at an interest rate of 5.60% for a term of 10 years and a 20 year amortization period. The applicant has submitted an affidavit indicating that they will fund a balloon payment when it becomes due.

Working capital requirements are estimated at \$1,623,231, which is equivalent to two months of first year expenses. The applicant will provide the funds from their personal resources to meet the working capital requirement. Presented

as BFA Attachment A are the personal net worth statements of the proposed members of Oasis Rehabilitation and Nursing, LLC, which indicates the availability of sufficient funds for the equity contribution for the purchase price and the working capital requirement. The applicant has submitted an affidavit indicating that they will contribute resources disproportionate to ownership percentages.

Presented as BFA Attachment C, is the pro-forma balance sheet of Oasis Rehabilitation and Nursing, LLC as of the first day of operation, which indicates a positive net asset position of \$2,880,098 on the first day of operation.

The submitted budget indicates a net income of \$460,713 during the first year subsequent to the change in operator. Staff notes that with the expected 2014 implementation of managed care for nursing home residents. Medicaid reimbursement is expected to change from state-wide price with a cost based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiation 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 the financial summary of Cedar Lodge Nursing Home. As shown, the facility had an average negative working capital position and an average negative net asset position from 2010 through 2012. Also, the facility incurred average losses of \$19,790 from 2010 through 2012. The applicant has indicated that the 2010 loss was the result of low occupancy in 2010. The facility put in place, policies and procedures to boost occupancy. The applicant has indicated that the reason for the 2012 loss was the result of a reduction in Medicare and Private Pay utilization, which led to a reduction of revenues.

As shown on Attachment D, the facilities owned by the proposed members achieved average net incomes.

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

Recommendation

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

## Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary - Cedar Lodge Nursing Home
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summary - Other facilities owned by the proposed members

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 1st day of August, 2013, 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 Oasis Rehabilitation and Nursing, LLC as the new operator of Cedar Lodge Nursing Home, 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:

131153 E

Oasis Rehabilitation and Nursing, LLC

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 continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
    - a. Reach out to hospital discharge planners 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
    - 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
      - Documentation pertaining to the number of referrals and the number of Medicaid admissions
      - 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. The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended. [BFA]
  4. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
  5. Submission of an executed and notarized CON Schedule 4B Medicaid Affidavit, which is acceptable to the Department. [CSL]
  6. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization or Certificate of Dissolution of Kenneth Gaul II, LLC, which is acceptable to the Department. [CSL]



APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year of the Public Health and Health Planning Council's recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the project by the applicant and an expiration of the approval. [PMU]

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

Barbara DelCogliano  
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 <sup>940</sup>

**DATE:** June 5, 2013

**SUBJECT:** Proposed Certificate of Incorporation of the Valentin Fuster – Mount Sinai Foundation for Science, Health and Empowerment, Inc.

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The attached proposed Certificate of Incorporation of Valentin Fuster – Mount Sinai Foundation for Science, Health and Empowerment, Inc. (“the Foundation”), dated April 2, 2013, is being submitted for Public Health and Health Planning Council approval. The Foundation’s Certificate includes amongst its purposes the power to make grants, contributions and to otherwise financially support The Mount Sinai Hospital, a hospital licensed pursuant to Article 28 of the Public Health Law, and the Icahn School of Medicine at Mount Sinai. Approval is therefore required by 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. A letter dated April 18, 2013, from Gil J. Ghatan, the corporation’s attorney, identifying the Foundation’s beneficiary, as well as indicating that no entities are controlled or will be controlled by the Foundation, other than its two members, The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai, as well as a description of the Foundation’s fund-raising activities;
2. The proposed Certificate of Incorporation of the Foundation;
3. The proposed Bylaws for the Foundation;
4. A letter from the intended beneficiary acknowledging and approving of the Foundation’s proposed fund-raising activities on their behalf;
5. A listing of information regarding the foundation’s initial Board of Directors.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments



ROPE & GRAY LLP  
ONE METRO CENTER  
700 12<sup>TH</sup> STREET, NW, SUITE 900  
WASHINGTON, DC 20005-3948  
WWW.ROPEGRAY.COM

April 18, 2013

Gil J. Ghatan  
T +1 202 508 4736  
F +1 202 383 8380  
gil.ghatan@ropesgray.com

**BY CERTIFIED MAIL**

Director, Bureau of House Counsel  
Division of Legal Affairs  
NYS Department of Health  
Corning Tower, Rm 2484  
Empire State Plaza  
Albany, NY 12237

**RECEIVED**

APR 22 2013

NYS DEPARTMENT OF HEALTH  
DIVISION OF LEGAL AFFAIRS  
BUREAU OF HOUSE COUNSEL

Re: Valentin Fuster – Mount Sinai Foundation for Science, Health and Empowerment, Inc.

Dear Sir or Madam:

The Valentin Fuster – Mount Sinai Foundation for Science, Health and Empowerment, Inc. (the “Foundation”) respectfully requests, pursuant to Sections 404(o) and (t) of the Not-for-Profit Corporation Law (“NPCL”), a letter of consent from the Public Health and Health Planning Council with respect to the enclosed Certificate of Incorporation (Exhibit 1). In accordance with the instructions set forth on the Department of Health’s website, the final paragraph of Article THIRD of the Certificate of Incorporation includes the posted requisite language in its entirety, expressly limiting the Foundation from engaging in the provision of hospital services and other similar activities.

Also enclosed are the following materials: the Foundation’s bylaws, to be adopted by the Foundation’s members following filing of the Certificate of Incorporation with the Division of Corporations (Exhibit 2); an original signed and dated letter from Foundation’s supported Article 28 beneficiary, The Mount Sinai Hospital, acknowledging that it will accept funds raised for it by the Foundation (Exhibit 3); and a list of the Foundation’s initial Board of Directors (Exhibit 4). Set forth immediately below is the additional information required for this request:

**Description of the Foundation’s fundraising activities:**

It is anticipated that financial support for the Foundation will be received primarily from gifts, grants, and contributions by friends, family and acquaintances of the Board.

Organizational relationship between the Foundation and its supported organizations:

The Foundation is being formed to support The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai, and any other organization that is controlled by these institutions that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. These institutions, through the research and clinical care programs of Mount Sinai Heart, a research institute that is part of The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai, seek to improve dramatically the cardiovascular health of local and global communities. The Foundation will assist The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai with the charitable, educational and scientific activities of Mount Sinai Heart by making grants and other financial distributions in furtherance of the work conducted by Mount Sinai Heart and the study of cardiovascular health and medicine.

The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai are the sole corporate members of the Foundation and together are empowered to appoint two-thirds of the directors of the Foundation. The remaining directors are to be appointed by Dr. Valentin Fuster, MD, PhD, the Director of Mount Sinai Heart, who is widely viewed as the pre-eminent cardiologist of our generation and a global leader on all the major fronts in the fight against cardiovascular disease. Dr. Fuster will serve as the Foundation's initial President and as a member of the Board of Directors.

Entities which control, or are controlled by, the Foundation:

As described above, the Foundation is controlled by The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai, which serve as the Foundation's sole corporate members. The Foundation does not control any entities.

Please do not hesitate to be in touch with any questions.

Sincerely yours,



Gil J. Ghatan

Enclosures

cc: Carolyn O. Ward  
Mark Kostegan  
Karen Colimore

**Exhibit 1**

Foundation's Certificate of Incorporation

CERTIFICATE OF INCORPORATION  
OF  
VALENTIN FUSTER -  
MOUNT SINAI FOUNDATION FOR SCIENCE, HEALTH AND EMPOWERMENT,  
INC.

Under Section 402 of the  
Not-for-Profit Corporation Law

THE UNDERSIGNED, for the purpose of forming a not-for-profit corporation under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), hereby certifies:

FIRST: The name of the corporation is VALENTIN FUSTER – MOUNT SINAI FOUNDATION FOR SCIENCE, HEALTH AND EMPOWERMENT, INC. (the "Corporation").

SECOND: The Corporation is a corporation defined in subparagraph (a)(5) of Section 102 (Definitions) of the NPCL.

THIRD: The Corporation is formed exclusively for charitable purposes under the NPCL in order to make contributions, grants and other distributions, and otherwise provide financial support, to The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai and any other organization that is controlled by The Mount Sinai Hospital and the Icahn School of Medicine at Mount Sinai that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 as now in effect or as may hereafter be amended (the "Code"), and classified as other than a private foundation under Section 509(a)(1) or Section 509(a)(2) of the Code (the "Supported Organizations").

In furtherance thereof, the Corporation may receive property by gift, devise or bequest, invest and reinvest the same, and apply the income and principal thereof, as the Board of Directors may from time to time determine, either directly or through contributions to any charitable organization or organizations, exclusively for charitable purposes, and engage in any lawful act or activity for which corporations may be organized under the NPCL.

In furtherance of its corporate purposes, the Corporation shall have all of the general powers enumerated in Section 202 of the NPCL, as now in effect or as may hereafter be amended, together with the power to solicit grants and contributions for such purposes. Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its

purposes, any of the activities described in NPCL Section 404(a)-(v), except for the solicitation of contributions on behalf of the Supported Organizations, under NPCL Sections 404(o) and 404(t).

Nothing herein 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 Public Health Law of the State of New York ("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 Social Services Law of the State of New York ("SSL"); or (5) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL. Additionally, nothing herein 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 Education Law of the State of New York, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

FOURTH: The Corporation shall be a Type B corporation under Section 201 of the NPCL.

FIFTH: The office of the Corporation within the State of New York is to be located in the County of New York.

SIXTH: The names and addresses of the individuals who are to serve as the initial directors of the Corporation until the first annual meeting or until their successors are elected and qualify are:

<i>Name</i>	<i>Address</i>
<i>Andrew M. Saul</i>	Mount Sinai Medical Center One Gustave L. Levy Place New York, NY 10029
<i>Valentin Fuster, MD, PhD</i>	Mount Sinai Medical Center One Gustave L. Levy Place New York, NY 10029



*Dennis Charney, MD*

Mount Sinai Medical Center  
One Gustave L. Levy Place  
New York, NY 10029

*Mark Kostegan*

Mount Sinai Medical Center  
One Gustave L. Levy Place  
New York, NY 10029

*Donald Scanlon*

Mount Sinai Medical Center  
One Gustave L. Levy Place  
New York, NY 10029

SEVENTH: The Corporation hereby designates the Secretary of State of the State of New York as agent of the Corporation upon whom process against it 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 which is served upon him is: Mount Sinai Medical Center, One Gustave L. Levy Place, Box 1049, New York, NY 10029.

EIGHTH (The following language relates to the Corporation's tax exempt status and is not a statement of purposes and powers. Consequently, this language does not expand or alter the Corporation's purposes or powers set forth in paragraph THIRD):

The Corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Code and shall be operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the Supported Organizations.

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to any member, director, trustee, or officer of the Corporation, or any private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth in Article THIRD hereof.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise permitted by Section 501(h) of the Code and in any corresponding laws of the State of New York), and the Corporation shall not participate in or intervene in (including the publishing or distribution of

statements concerning) any political campaign on behalf of (or in opposition to) any candidate for public office.

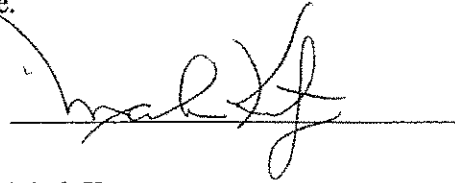
During such period, or periods, of time as the Corporation is treated as a "private foundation" pursuant to Section 509 of the Code, the directors must distribute the Corporation's income at such time and in such manner so as not to subject the Corporation to tax under Section 4942 of the Code, and the Corporation is prohibited from engaging in any act of self-dealing (as defined in Section 4941(d) of the Code), from retaining excess business holdings (as defined in Section 4943(c) of the Code) which would subject the Corporation to tax under Section 4943 of the Code, from making any investments or otherwise acquiring assets in such manner so as to subject the Corporation to tax under Section 4944 of the Code, from retaining any assets which would subject the Corporation to tax under Section 4944 of the Code if the directors have acquired such assets, and from making any taxable expenditures (as defined in Section 4945(d) of the Code).

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from federal income taxation as a corporation described in Section 501(c)(3) of the Code, or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code.

NINTH: In the event of dissolution or final liquidation of the Corporation, all of the remaining assets and property of the Corporation shall, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation and for the necessary expenses thereof, be distributed to the Supported Organizations, and if the Supported Organizations are no longer in existence, then to such organization or organizations organized and operated exclusively for charitable or educational purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code. In the event of voluntary dissolution, such organization or organizations shall be selected in the discretion of the directors, subject to approval of the plan of dissolution and distribution of assets upon an order of a Justice of the Supreme Court of the State of New York.

TENTH: The Corporation shall have members as set forth in the bylaws.

IN WITNESS WHEREOF the undersigned, a natural person at least eighteen years of age, has subscribed this Certificate this 2 day of April, 2013, and affirmed under penalties of perjury that the statements made herein are true.

A handwritten signature in black ink, appearing to read "Mark Kostegan", is written over a horizontal line.

Mark Kostegan  
Senior Vice President Development  
Mount Sinai Medical Center  
One Gustave L. Levy Place  
New York, NY 10029

INCORPORATOR

**Exhibit 2**

Foundation's Bylaws

**VALENTIN FUSTER -  
MOUNT SINAI FOUNDATION FOR SCIENCE, HEALTH AND EMPOWERMENT,  
INC.**

\* \* \*

**BYLAWS**

**ARTICLE I**

*Name, Purposes and Offices*

Section 1.01. *Name.* The name of the corporation is and shall be VALENTIN FUSTER – MOUNT SINAI FOUNDATION FOR SCIENCE, HEALTH AND EMPOWERMENT, INC. (the “Corporation”).

Section 1.02. *Purposes.* The purposes of this Corporation shall be as set forth in its Certificate of Incorporation.

Section 1.03. *Offices.* The principal office of the Corporation within the State of New York shall be located in the County of New York. The Corporation may also maintain additional offices at such other places within or outside the State of New York as the Board of Directors may from time to time determine.

**ARTICLE II**

*Members*

Section 2.01. *Who Shall Be Members.* The sole members of the Corporation shall be the Icahn School of Medicine at Mount Sinai and The Mount Sinai Hospital. Any action to be taken by a member shall be deemed duly authorized when taken by the governing board of such member or its duly authorized representative.

Section 2.02. *Annual Meeting.* A meeting of the members of the Corporation shall be held annually on a date to be determined by the members. At the annual meeting, the members of the Corporation shall appoint those members of the Board of Directors (the “Board”) allocated to the members as described in Section 3.02 of these Bylaws and for the transaction of such other business as may properly come before the meeting.

Section 2.03. *Special Meetings.* Special meetings of the members may be called by the Board or by the President or Secretary. Special meetings shall be held at such place, date and hour within or without the State of New York as may be specified in the notice thereof; provided that if no place is specified therein, then at the office of the Corporation.

Section 2.04. *Notice of Meetings.* Whenever members are required or permitted to take any action at a meeting, written notice shall be given to the members by the Secretary stating the place, date and hour of the meeting and, unless it is the annual meeting, indicating that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. Except as otherwise provided by the Not-for-Profit Corporation Law of the State of New York (“NPCL”), a copy of the notice of any meeting shall be given, personally or by mail, not less than ten (10) nor more than fifty (50) days before the meeting. If mailed, such notice shall be given when deposited in the United States mail, with postage thereon prepaid, directed to the member at such member’s address as it appears on the record of members, or, if such member shall have filed with the Secretary of the Corporation a written request that notices to such member be mailed to some other address, then directed to such member at such other address.

When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting.

Section 2.05. *Waivers of Notice.* Notice of any members’ meeting need not be given to any member who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by such member.

Section 2.06. *Quorum at Meetings.* Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, members entitled to cast a majority of the total number of votes entitled to be cast thereat shall constitute a quorum at any meeting of members for the transaction of any business. Notwithstanding the foregoing, the members present at any meeting may adjourn any meeting to another time or place despite the absence of a quorum.

Section 2.07. *Vote of Members.* Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, whenever any corporate action is to be taken by vote of the members, it shall be authorized by a majority of the votes cast at a meeting of members.

Except as provided in the preceding paragraph, any reference in these Bylaws to corporate action at a meeting of the members by “majority vote” or “two-thirds” vote shall require the action to be taken by such proportion of the votes cast at such meeting, provided that the affirmative votes cast in favor of any such action shall be at least equal to the quorum. Blank votes or abstentions shall not be counted in the number of votes cast.

Section 2.08. *Action by Members Without a Meeting.* Whenever under any provision of law, the Certificate of Incorporation or these Bylaws, 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 of the members entitled to vote thereon. Written consent thus given by all members entitled to vote shall have the same effect as a unanimous vote of

members, and any certificate with respect to the authorization or taking of any such action which is delivered to the Department of State of the State of New York shall recite that the authorization was by unanimous written consent.

### ARTICLE III

#### *Board of Directors*

Section 3.01. *Powers of Board and Qualification of Directors.* The Corporation shall be managed by its Board of Directors. Each person sitting on the Board (each, a “Director”) shall be at least eighteen (18) years of age.

Section 3.02. *Number of Directors.* The number of Directors constituting the entire Board shall be determined by the members from time to time, but shall in no case be less than three (3). Subject to the forgoing, the number of Directors may be increased or decreased from time to time by amendment of the Bylaws or by a vote of the members, except that in no case may any decrease in the number of Directors shorten the term of any incumbent Director.

The Directors constituting the Board shall be appointed as follows:

(i) The members of the Corporation shall have the right to appoint two thirds (2/3) of the Directors. One Director appointed by the members of the Corporation shall be the Dean of the Icahn School of Medicine at Mount Sinai or his or her designee, who shall be a member of the leadership team of the Icahn School of Medicine at Mount Sinai or The Mount Sinai Hospital.

(ii) Valentin Fuster, MD, PhD shall have the right to appoint one third (1/3) of the Directors, which may include the appointment of Valentin Fuster. If, by virtue of his death or disability, Valentin Fuster is unable to appoint one or more Directors, or if Valentin Fuster relinquishes his right to appoint one or more Directors, such directorships shall be filled by appointment of the members of the Corporation.

If the number of directorships on the Board is not evenly divisible by three, the additional directorships remaining after dividing the total number of Directors evenly into three shall be filled by appointment of the members of the Corporation.

Section 3.03. *Appointment and Term of Directors.* The initial Directors shall be composed of those Directors named in the Certificate of Incorporation. Any Director serving by virtue of his or her position with the Icahn School of Medicine at Mount Sinai, The Mount Sinai Hospital or Mount Sinai Heart (a division of Mount Sinai Hospital) shall hold office for so long as he or she holds such position with the Icahn School of Medicine at Mount Sinai, The Mount Sinai Hospital or Mount Sinai Heart, and until his or her successor is elected or qualified, or until his or her death, resignation or removal. Any other Director appointed by the members of the Corporation and any Director serving by appointment of Valentin Fuster shall hold office for a term of three (3) years and shall continue in office until his or her successor is elected or

qualified, or until his or her death, resignation or removal. The tenure of incumbent members of the Board shall not be affected by an increase or decrease in the number of Directors.

Section 3.04. *Newly-Created Directorships and Vacancies.* Newly-created directorships resulting from an increase in the number of Directors and vacancies occurring in the Board for any reason shall be filled by the members in the case of any vacancy or newly-created directorship attributable to directorships allocated to the members, or by Valentin Fuster in the case of any vacancy or newly-created directorship attributable to directorships allocated to Valentin Fuster, as set forth in Section 3.02. Any appointment shall be effected by notice in writing to the Corporation and the Board and shall take effect at the next meeting of the Board immediately following the delivery of such notice.

Section 3.05. *Resignation.* Any Director may resign from office at any time by delivering a resignation in writing to the Corporation. Such resignation shall take effect at the time specified therein, or if the time is not specified therein, then upon receipt thereof. No acceptance of such resignation shall be necessary to make it effective.

Section 3.06. *Removal of Directors.* Any Director may be removed at any time, with or without cause, by the members of the Corporation in the case of a Director appointed by the members, or by Valentin Fuster in the case of a Director appointed by Valentin Fuster.

Section 3.07. *Meetings of the Board.* Meetings of the Board, annual, regular or special, may be held at any place within or without the State of New York as may be fixed by the Board from time to time or as shall be specified in the respective notice or waivers of notice thereof. The annual meeting of the Board shall take place on a date to be determined annually by the Board. No notice shall be required for regular or annual meetings for which the time and place have been fixed. Special meetings of the Board may be called at any time by the President or as determined by the Board.

Notice of any meeting of the Board for which notice is required, including any special meeting of the Board, shall be mailed to each Director at such Director's residence or usual place of business, sent by electronic mail or other form of electronic communication or given personally or by telephone no less than five (5) days before the meeting is to be held. Notice of a meeting need not be given to any Director who submits a signed 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. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Board.

A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting of the Board to another time or place shall be given to the Directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other Directors.

Section 3.08. *Quorum and Voting.* Unless a greater proportion is required by law or by the Certificate of Incorporation, a majority of the Board shall constitute a quorum for the



transaction of business or of any specified item of business. The Board may, by amendment of these Bylaws, fix the quorum at less than a majority of the entire board, provided, however, that in the case that the number of the entire Board is fifteen (15) members or less, the quorum shall be at least one-third of the entire number of Directors, and in the case of a Board of more than fifteen (15) members, the quorum shall be at least five members plus one additional member for every ten (10) members (or fraction thereof) in excess of fifteen (15). Except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws, the vote of a majority of the Directors present at a meeting at the time of the vote, if a quorum is present at such time, shall be the act of the Board.

Section 3.09. *Distributions.* Any distribution of funds or assets by the Corporation to or in support of the Icahn School of Medicine at Mount Sinai or The Mount Sinai Hospital must be approved by a majority vote of the entire Board.

Section 3.10. *Committees of the Board and of the Corporation.* The Board, by resolution adopted by a majority of the entire Board, may designate from among its members an Executive Committee and other standing committees, each consisting of three (3) or more Directors, and each of which, to the extent provided in the resolution, shall have all the authority of the Board, to the fullest extent permitted by law. The Board may designate one or more Directors as alternate members of any standing committee, who may replace any absent member or members at any meeting of such committee.

The Board may also create such special committees as may be deemed desirable. The members of such committees shall be appointed by the Chairman of the Board, if any, or by the President of the Corporation with the consent of the Board. Special committees shall only have the powers specifically delegated to them by the Board and in no case shall have powers which are not authorized for standing committees under the Not-for-Profit Corporation Law.

Each such committee shall serve at the pleasure of the Board. The designation of any such committee and the delegation thereto of authority shall not alone relieve any Director of his or her duty to the Corporation under § 717 of the Not-for-Profit Corporation Law.

Committees, other than standing or special committees of the Board, shall be committees of the Corporation. Such committees may be elected or appointed as officers of the Corporation, and provisions of the Not-for-Profit Corporation law applicable to officers generally shall apply to members of such committees.

Section 3.11. *Written Consent of Directors; Meetings by Conference Telephone.* Any action required or permitted to be taken by the Board or any committee thereof may be taken without a meeting if all members of the Board or such committee consent in writing to the adoption of a resolution authorizing such action. Each resolution so adopted and the written consents thereto by members of the Board or such committee shall be filed with the minutes of the proceedings of the Board or such committee.

Any one or more members of the Board or of any committee thereof may participate in a meeting of such Board or 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 3.12. *Compensation of Directors.* The Corporation shall not pay any compensation to Directors, except that Directors may be reimbursed for expenses incurred in the performance of their duties to the Corporation, in reasonable amounts as approved by a majority vote of the entire Board.

Section 3.13. *Annual Report.* The Board shall direct the President and Treasurer to present at the annual meeting of the members a report, verified by the President and Treasurer or by a majority of the Board, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board, showing in appropriate detail the following: (1) the assets and liabilities, including the trust funds, of the Corporation as of the end of a twelve-month fiscal period terminating not more than six months prior to said meeting; (2) the principal changes in assets and liabilities, including trust funds, during said fiscal period; (3) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes during said fiscal period; (4) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period; and (5) the number of members of the Corporation 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 address of the current members may be found.

The annual report shall be filed with the records of the Corporation and either a copy of an abstract thereof entered in the minutes of the proceedings of the annual meeting of members.

Section 3.14. *Purchase, Sale, Mortgage and Lease of Real Property.* No purchase of real property shall be made by the Corporation and the Corporation shall not sell, mortgage, or lease real property, unless authorized by the vote of two-thirds of the entire Board, provided, however, that if there are twenty-one (21) or more Directors, the vote of a majority of the entire Board shall be sufficient.

## ARTICLE IV

### *Officers, Agents and Employees*

Section 4.01. *General Provisions.* The officers of the Corporation shall be a President, a Secretary and a Treasurer, and may include a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers. Except for the Chairman of the Board, if any, the officers may or may not be members of the Board of Directors. The Board may appoint other officers, who shall have such authority and perform such duties as may be prescribed by the Board.

Section 4.02. *Term of Office.* The officers shall be elected by the Board at the annual meeting of the Board. Each officer shall hold office until the next annual meeting of the Board after his or her appointment and until his or her successor has been appointed and qualified. Any

two or more offices may be held by the same person, except the offices of President and Secretary.

Section 4.03. *Vacancies and Removal.* If an office becomes vacant for any reason, the Board may fill such vacancy. Any officer so appointed or elected shall serve only until such time as the unexpired term of his or her successor shall have expired unless re-elected by the Board. Any officer may be removed by the Board with or without cause. Such removal without cause shall be without prejudice to such person's contract rights, if any, but the appointment of any person as an officer, agent or employee of the Corporation shall not itself create contract rights.

Section 4.04. *Resignation.* Any officer may resign from office at any time by delivering a resignation in writing to the Corporation. Such resignation shall take effect at the time specified therein, or if the time is not specified therein, then upon receipt thereof. No acceptance of such resignation shall be necessary to make it effective.

Section 4.05. *Powers and Duties of Officers.* Subject to the control of the Board, all officers as between themselves and the Corporation shall have such authority and perform such duties in the management of the property and affairs of the Corporation as may be provided in these Bylaws or by resolution of the Board and, to the extent not so provided, as generally pertain to their respective offices.

A. *Chairman of the Board.* The Chairman of the Board, if any, shall preside at all meetings of the Board at which the Chairman is present and shall perform such other duties as the Board may designate.

B. *President.* The President shall serve as the chief executive officer of the Corporation. In the absence of the Chairman of the Board, the President shall preside at all meetings of the Board and, subject to the supervision of the Board, shall perform all duties customary to that office and shall supervise and control all of the affairs of the Corporation in accordance with policies and directives approved by the Board. The President shall see that the resolutions and directives of the Board are carried into effect, except in those instances in which the responsibility is assigned to some other person by the Board; and, in general, he or she shall discharge all duties incident to the office of President and such other duties as may be prescribed by the Board. Except in those instances in which the authority to execute is expressly delegated to another officer of the Corporation or a different mode of execution is expressly prescribed by the Board, the President may execute for the Corporation any contracts or other instruments which the Board has authorized to be executed, and he or she may accomplish such execution either under or without the seal of the Corporation and either individually or with the Secretary, any Assistant Secretary, or any other office thereunto authorized by the Board, according to the requirements of the form of the instrument. The President may vote all securities which the Corporation is entitled to vote.

C. *Vice President.* In the absence of the President or in the event of his or her inability or refusal to act, the Vice President shall perform the duties of the President, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the President. If

there is more than one Vice President, the Board shall determine which Vice President shall perform the duties of the President during the President's absence. The Vice President shall perform such other duties and have such other powers as the Board may from time to time prescribe by standing or special resolution, or as the President may from time to time provide, subject to the powers and supervision of the Board.

D. *Secretary.* The Secretary shall be responsible for the keeping of an accurate record of the proceedings of all meetings of the Board, shall give or cause to be given all notices in accordance with these Bylaws or as required by law, and, in general, shall perform all duties customary to the office of Secretary. The Secretary shall have custody of the corporate seal of the Corporation, if any; and he or she shall have authority to affix the same to any instrument requiring it; and, when so affixed, it may be attested by his or her signature. The Board may give general authority to any officer to affix the seal of the Corporation, if any, and to attest the affixing by his or her signature.

E. *Treasurer.* The Treasurer shall have the custody of, and be responsible for, all funds and securities of the Corporation. He or she shall keep or cause to be kept complete and accurate accounts of receipts and disbursements of the Corporation, and shall deposit all monies and other valuable property of the Corporation in the name and to the credit of the Corporation in such banks or depositories as the Board may designate. Whenever required by the Board, the Treasurer shall render a statement of accounts. He or she shall at all reasonable times exhibit the books and accounts to any officer or Director of the Corporation, and shall perform all duties incident to the office of Treasurer, subject to the supervision of the Board, and such other duties as shall from time to time be assigned by the Board.

Section 4.06. *Agents and Employees.* The Board may appoint agents and employees who shall have such authority and perform such duties as may be prescribed by the Board. The Board may remove any agent or employee at any time with or without cause. Removal without cause shall be without prejudice to such person's contract rights, if any, and the appointment of such person shall not itself create contract rights.

Section 4.07. *Compensation of Officers, Agents and Employees.* Officers may receive compensation in such reasonable amounts as may be fixed by a majority vote of the entire Board of Directors.

The compensation of agents and employees shall be fixed by the Board, but this power may be delegated to any officer, agent or employee as to persons under that person's direction or control. The Board may require officers, agents or employees to give security for the faithful performance of their duties.

## ARTICLE V

### MISCELLANEOUS

Section 5.01. *Fiscal Year.* The fiscal year of the Corporation shall be determined by resolution of the Board.

Section 5.02. *Corporate Seal.* The seal of the Corporation, if any, shall be circular in form and contain the name of the Corporation, the words “Corporate Seal” and “New York” and the year the Corporation was formed in the center. The Corporation may use the seal by causing it or a facsimile to be affixed or impressed or reproduced in any manner.

Section 5.03. *Checks, Notes, Contracts.* The Board shall determine who shall be authorized from time to time on the Corporation’s behalf to sign checks, notes, drafts, acceptances, bills of exchange and other orders or obligations for the payment of money; to enter into contracts; or to execute and deliver other documents and instruments. In the absence of such determination, or unless otherwise specified, the President shall be empowered to sign such instruments.

Section 5.04. *Fundraising.* All fundraising activities by the Corporation, including those which use the names of the Supported Organizations, shall be coordinated with The Mount Sinai Hospital’s Development Office.

Section 5.05. *Books and Records.* The Corporation shall keep at its principal office in the State of New York (1) correct and complete books and records of accounts, (2) minutes of the proceedings of its members, Board and any committee of the Corporation, and (3) a current list or record containing the names and addresses of all members, Directors and officers of the Corporation. Any of the books, records and minutes of the Corporation may be in written form or in any other form capable of being converted into written form within a reasonable time.

Section 5.06. *Amendments to Certificate and Bylaws.* The Certificate of Incorporation may be amended by a majority vote of the members pursuant to § 802 of the NPCL. These Bylaws may be amended or repealed, and new Bylaws may be adopted, by the members or by the Board. Any Bylaw adopted by the Board may be amended or repealed by the members and any Bylaw adopted by the members may be amended or repealed by the Board except that the Board shall not amend or repeal a Bylaw adopted by the members which provides that such Bylaw shall not be subject to amendment or repeal by the Board.

Section 5.07. *Conflict of Interest Policy.* The Corporation shall be subject to the provisions of conflict of interest policies adopted by the Icahn School of Medicine at Mount Sinai and The Mount Sinai Hospital.

Section 5.08. *Indemnification and Insurance.* Except in relation to matters as to which a person is adjudged to be liable to the Corporation, the Corporation shall indemnify, and provide for the advancement of reasonable expenses to, in the manner set forth in the NPCL, any person made, or threatened to be made, a party to an action either by or in the right of the Corporation to

procure a judgment in its favor or any other action, whether civil or criminal, by reason of the fact that he, his testator or intestate, is or was a director, officer, employee or agent of the Corporation, against judgments, fines, amounts paid in settlement and the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, or in connection with an appeal therein, if such person acted in good faith for a purpose which he reasonably believed to be in the best interests of the Corporation, and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his conduct was unlawful. The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation and its Directors and officers to the full extent such indemnification is permitted by law.

In no case, however, shall the Corporation indemnify, reimburse, or insure any person for any taxes imposed on such individual under chapter 42 of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended (the "Code"). Further, if at any time the Corporation is deemed to be a private foundation within the meaning of section 509 of the Code then, during such time, no payment shall be made under this Article if such payment would constitute an act of self-dealing or a taxable expenditure, as defined in section 4941(d) or section 4945(d), respectively, of the Code. Moreover, the Corporation shall not indemnify, reimburse, or insure any person in any instance where such indemnification, reimbursement, or insurance is inconsistent with section 4958 of the Code or any other provision of the Code applicable to corporations described in section 501(c)(3) of the Code.

If any part of this Article shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.

Section 5.08. *Loans to Directors or Officers.* No loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, shall be made by the Corporation to its Directors or officers, or to any other corporation, firm, association or other entity in which one or more of its Directors or officers are Directors or officers of the Corporation, or hold a substantial financial interest except that the Corporation may make a loan to any corporation which is a Type B corporation under the NPCL.

\* \* \*

**Exhibit 3**

Letter from The Mount Sinai Hospital



The Mount Sinai Medical Center  
One Gustave L. Levy Place, Box 1049  
New York, NY 10029-6574

April 8, 2013

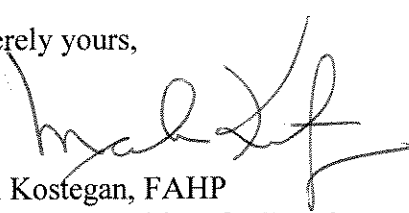
Valentin Fuster – Mount Sinai Foundation for Science, Health and Empowerment, Inc.  
Mount Sinai Medical Center  
One Gustave L. Levy Place, Box 1049  
New York, NY 10029

Re: Financial Support of The Mount Sinai Hospital

Dear Dr. Fuster:

The Mount Sinai Hospital (the “Hospital”) hereby recognizes that the Valentin Fuster – Mount Sinai Foundation for Science, Health and Empowerment, Inc. (the “Foundation”) seeks to support the Hospital’s charitable activities by making grants and providing other financial support in furtherance of the study of cardiovascular health and medicine. As an organization licensed as a hospital under Article 28 of the New York Public Health Law, the Hospital acknowledges that it will accept funds raised by the Foundation in support of such activities.

Sincerely yours,



Mark Kostegan, FAHP  
Senior Vice President for Development



**Exhibit 4**

Foundation's initial Board of Directors

## Foundation's Initial Board of Directors

### **Andrew M. Saul**

Address: Mount Sinai Medical Center, One Gustave Levy Place, New York, NY 10029

Occupation/Title: General Partner

Employer name: Saul Partners, L.P.

Employer address: 9. W. 57th Street, Ste. 3405, New York, NY 10019

Past and present affiliation with other charitable organizations:

- Trustee, Metropolitan Museum of Art
- Vice Chairman, Metropolitan Transportation Authority
- Co-founder, The Denise & Andrew Saul Foundation

### **Valentin Fuster, MD, PhD**

Address: Mount Sinai Medical Center, One Gustave Levy Place, New York, NY 10029

Occupation/Title: Director, Mount Sinai Heart Institute

Employer name: Mount Sinai Medical Center

Employer address: One Gustave Levy Place, New York, NY 10029

Past and present affiliation with other charitable organizations:

- General Director, The Centro Nacional de Investigaciones Cardiovasculares Carlos III (CNIC) in Madrid, Spain
- Member, The Institute of Medicine of the National Academies of Sciences; Chair of the committee on Preventing the Global Epidemic of Cardiovascular Disease
- Member, the Institute of Medicine of the National Academy of Sciences
- Chairman, SHE Foundation in Spain dedicated to healthy lifestyle habits in children
- Member, La Sociedad Mexicana para el Estudio de la Hipertension Arterial
- President, Paul Dudley White Society of the Massachusetts General Hospital
- Past member, the National Institutes of Health, National Heart, Lung and Blood Institute Advisory Council
- Part President, American Heart Association
- Past President, World Heart Federation
- Former Chairman, the Fellowship Training Directors Program of the American College of Cardiology

### **Dennis S. Charney, MD**

Address: Mount Sinai Medical Center, One Gustave Levy Place, New York, NY 10029

Occupation/Title: Dean

Employer name: Icahn School of Medicine at Mount Sinai

Employer address: One Gustave Levy Place, New York, NY 10029

Past and present affiliation with other charitable organizations:

- Member, Food and Drug Administration Psychopharmacologic Drug Advisory Committee
- Member, Scientific Advisory Board of the National Alliance for Research on Schizophrenia and Depression (now known as the Brain & Behavior Research Foundation)
- Member, National Alliance for the Mentally Ill

- Former Chair, Board of Scientific Counselors for the National Institute of Mental Health
- Former Chair, Scientific Advisory Board of the Anxiety Disorders Association of America
- Former Chair, Depression and Bipolar Support Alliance Scientific Advisory Board
- Past President, American College of Neuropsychopharmacology
- Former Scientific Director, National Institute of Mental Health Strategic Plan for Mood Disorder Research in 2002

**Mark Kostegan**

Address: Mount Sinai Medical Center, One Gustave Levy Place, New York, NY 10029

Occupation/Title: Senior Vice President of Development

Employer name: Mount Sinai Medical Center

Employer address: One Gustave Levy Place, New York, NY 10029

Past and present affiliation with other charitable organizations:

- Fellow, Association for Healthcare Philanthropy
- Past Chief Development Officer, Brigham and Women's Hospital
- Past Chief Philanthropy Officer, Joslin Diabetes Center
- Past Chief Philanthropy Officer, Boston Children's Hospital
- Past Chief Philanthropy Officer, Massachusetts Eye and Ear Infirmary

**Donald Scanlon**

Address: Mount Sinai Medical Center, One Gustave Levy Place, New York, NY 10029

Occupation/Title: Executive Vice President and Chief Financial Officer

Employer name: Mount Sinai Medical Center

Employer address: One Gustave Levy Place, New York, NY 10029

Past and present affiliation with other charitable organizations: None

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 1st day of August, 2013, approves the filing of the Certificate of Incorporation of Valentin Fuster-Mount Sinai Foundation for Science, Health and Empowerment, dated April 2, 2013.



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

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

**FROM:** James E. Dering, General Counsel *James E. Dering*  
Division of Legal Affairs *for JED*

**DATE:** March 20, 2013

**SUBJECT:** Certificate of Amendment of the Certificate of Incorporation of Planned Parenthood of South Central New York, Inc.

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Attached is the Certificate of Amendment of the Certificate of Incorporation of Planned Parenthood of South Central New York, Inc. This not-for-profit corporation seeks approval to change its name to "Family Planning of South Central New York, Inc." 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 March 15, 2013 from Debra Marcus, the corporation's Chief Executive Officer. As explained in that letter, the corporation has disaffiliated with Planned Parenthood Federation of America, thus is no longer a Planned Parenthood Affiliate and believes that the name change reflects its intent to address the needs of the general population in its region.

The Department has no objection to the name change, and the Certificate of Amendment of the Certificate of Incorporation is in legally acceptable form.

Attachments

62453

# Family Planning

OF SOUTH CENTRAL NEW YORK, INC.™

**Chief Executive Officer**

Debra Marcus, Esq.

**Medical Director**

Diane Georgeson, M.D.

**Board of Directors**

Karen Elting  
Edgar Parsons III  
*Co-Chairs*

Melinda Hardin  
*1st Vice Chair*

Sondra Pruden, R.N.  
*2nd Vice Chair*

Omar Sanders  
*Treasurer*

Jonathan Collett, Ph.D.  
*Secretary*

Melissa Brennan, M.S., R.N., F.N.P.  
Christopher Brown, R.Ph.  
Mary Carson  
Melissa DeCordova  
Elizabeth Horvath  
Ellen Lee, Ed.D., M.S.N.  
Mary Pat Lewis, Ph.D., R.N.  
Katharine Lloyd, M.D.  
Deborah Oliver, M.S.W.  
Edith Revolt  
Rev. Craig Schwalenberg  
Elizabeth Steele  
Amber Tatnall, Ph.D.  
Maureen Wilson

**Honorary Board of Directors**

Hon. David Brenner, Ph.D.  
Margaret Drugovich, D.M.  
Norma Lee Havens  
Nancy Kleniewski, Ph.D.  
Anne D. Taft  
Candace Vancko, Ph.D.

**Health Center Locations**

Binghamton • 117 Hawley Street  
607.723.8306

Norwich • Eaton Center #208  
26 Conkey Avenue  
607.334.6378

Oneonta • 37 Dietz Street  
607.432.2250

Sidney • 37 Pleasant Street  
607.563.4363

Walton • 130 North Street  
607.865.6579

March 15, 2013

Division of Legal Affairs  
NYS Department of Health  
Empire State Plaza  
Corning Tower Bldg., Room 2468  
Albany, NY 12237

Attention: Jeong Oh

Re: Operating Certificate 3801202R

Dear Mr. Oh,

As requested in your telephone conversation with Shirley Hadley today, following is the reason we are changing our corporation's name from Planned Parenthood of South Central New York, Inc. to Family Planning of South Central New York, Inc.

Effective March 1, 2013, we have disaffiliated with Planned Parenthood Federation of America, thus are no longer a Planned Parenthood Affiliate. This means that we can no longer use the branded name of "Planned Parenthood".

Thank you for making our name change retroactive to the initial filing. If you need any further information, please feel free to contact Shirley Hadley, Director of HR and Administration at 607-723-5130, ext 226 or email her at [shirley.hadley@fpcny.org](mailto:shirley.hadley@fpcny.org). You can also contact me at 607-432-2252, ext 316 or by email to [debra.marcus@fpcny.org](mailto:debra.marcus@fpcny.org).

Sincerely,



Debra Marcus  
Chief Executive Officer

DM/sh

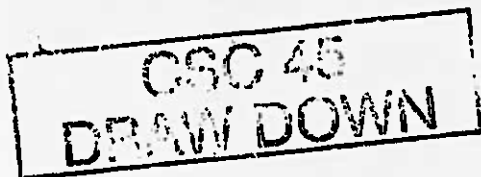
**Administrative Offices**

117 Hawley Street • Binghamton, New York 13901  
37 Dietz Street • Oneonta, New York 13820

Phone: 607.723.5130 Fax: 607.723.4087  
Phone: 607.432.2252 Fax: 607.432.7206

Web: [www.fpcny.org](http://www.fpcny.org)

E-mail: [fpcny@fpcny.org](mailto:fpcny@fpcny.org)



130220000756

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF**

**PLANNED PARENTHOOD OF SOUTH CENTRAL NEW YORK, INC.**

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**Under Section 803 of the Not-for-Profit Corporation Law**

1. The name of the Corporation is PLANNED PARENTHOOD OF SOUTH CENTRAL NEW YORK, INC. and the name under which it was formed was PLANNED PARENTHOOD ASSOCIATION OF DELAWARE AND OTSEGO COUNTIES, INC.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on April 26, 1972 and the law under which the Corporation was formed is the Not-For-Profit Corporation Law of the State of New York.
3. The Corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation and shall remain a Type B corporation after this amendment.
4. The Certificate of Incorporation is hereby amended as follows:
  - a. Paragraph 1 of the Certificate of Incorporation, as amended, which sets forth the name of the corporation, is hereby amended to read in its entirety as follows:
    - "1. The name of the Corporation is FAMILY PLANNING OF SOUTH CENTRAL NEW YORK, INC."
  - b. Paragraph 8 of the Certificate of Incorporation, as amended, which sets forth the address for service of process, is hereby amended to read in its entirety as follows:
    - "8. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:  
  
37 Dietz Street  
Oneonta, New York 13820  
ATTN: Chief Executive Officer"
5. This Certificate of Amendment was authorized by the vote of a majority of the entire board of directors. The Corporation has no members.

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6. The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

37 Dietz Street  
Oneonta, New York 13820  
ATTN: Chief Executive Officer

**IN WITNESS WHEREOF**, the undersigned has subscribed this Certificate of Amendment of the Certificate of Incorporation this 26th day of November, 2012.



Name: Debra Marcus  
Title: Chief Executive Officer



## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 1st day of August, 2013, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Planned Parenthood of South Central New York, Inc., dated November 26, 2012.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

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

**FROM:** James E. Dering, General Counsel *[Signature]* / JED

**DATE:** July 9, 2013

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of SS Joachim & Anne Residence

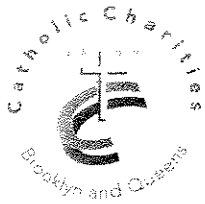
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Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of SS Joachim & Anne Residence. This not-for-profit corporation seeks approval to change its corporate name to "Saints Joachim and Anne Nursing and Rehabilitation Center," its current assumed name. The Public Health Council established the corporation as the operator of a residential health care facility in Kings County in 1988. 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 April 5, 2013 from Jeanne M. Diulio, attorney for the corporation. As explained in that letter, the name change is in addition to amendments that change the address for service of process and add language required by the United States Department of Housing and Urban Development in furtherance of a loan application. 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



**Administration**  
191 Joralemon Street  
Brooklyn, NY 11201

T 718 722 6000 www.ccbq.org  
F 718 722 6096

Changing Lives...  
Building Communities™

April 5, 2013

Ms. Colleen Frost  
Executive Secretary  
NYS Public Health and Health Planning Council  
Corning Tower, 18<sup>th</sup> Floor  
Albany, New York 12237

Re: Certificate of Amendment of the Certificate of Incorporation of  
SS Joachim & Anne Residence

Dear Ms. Frost:

I am writing on behalf of SS Joachim & Anne Residence, a nursing and rehabilitation center affiliated with Catholic Charities. SS Joachim & Anne Residence is amending its Certificate of Incorporation by making the following changes:

1. Changing its name to "Saints Joachim and Anne Nursing and Rehabilitation Center".
2. Changing its address for service of process.
3. Adding language required by US Housing and Urban Development in order for SS Joachim & Anne Residence to apply for a loan from HUD

Enclosed please find a copy of the proposed Amendment to the Certificate of Incorporation which includes the above changes as well as a copy of the original Certificate of Incorporation. It is our understanding that the Public Health and Health Planning Council will next meet on June 6, 2013 and we respectfully request that the PHHPC review and approve the proposed Amendment to the Certificate of Incorporation at that time.

Please feel free to contact me at 718-722-6086, [jdiulio@ccbq.org](mailto:jdiulio@ccbq.org), or the address listed above should you have any questions or require further information. Thank you for your consideration and attention to this matter.

Very truly yours,

Jeanne M. Diulio  
Associate Director  
Office of Legal Affairs

enclosures

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
SS JOACHIM & ANNE RESIDENCE**

**Under Section 803 of the  
Not-for-Profit Corporation Law  
of the State of New York**

The undersigned, being respectively the President and Vice President, ex officio, of SS Joachim & Anne Residence ("the Corporation") do hereby make, execute and file this amended certificate pursuant to provisions of Section 803 of the Not-for-Profit Corporation Law of the State of New York and do hereby certify as follows:

1. The name of the Corporation is "SS Joachim & Anne Residence".
  
2. The original Certificate of Incorporation of SS Joachim & Anne Residence was filed in the Office of the Secretary of State of the State of New York on December 8, 1988. The Corporation was formed under and pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York.
  
3. The Corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The Corporation is and shall continue to

be a Type "B" corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

4. (a) The Certificate of Incorporation of SS Joachim & Anne Residence is hereby amended so that the name of the Corporation is changed to "Saints Joachim and Anne Nursing and Rehabilitation Center".

(b) To effect the foregoing, Article I relating to the name of the Corporation is amended to read as follows:

I

The name of the proposed corporation is Saints Joachim and Anne Nursing and Rehabilitation Center.

5. (a) The Certificate of Incorporation of SS Joachim & Anne Residence is further amended by adding to the Corporation's powers, the power to obtain a mortgage loan insured by the Secretary of Housing and Urban Development.

(b) To effect the foregoing, Article II relating to the purposes and powers of the Corporation is amended by adding the following to the end of such Article, after the first two paragraphs:

## II

In addition to the foregoing Corporate purposes, the Corporation is authorized to and shall have the power to obtain a mortgage loan (the "Mortgage Loan") to be insured by the Secretary ("the Secretary") of Housing and Urban Development ("HUD") under the National Housing Act, as amended with respect to a residential health care facility (the "Project"). The Corporation is authorized to execute a Regulatory Agreement with the Secretary, a non-recourse promissory note (the "Note"), a mortgage, deed of trust, security deed or equivalent instrument (the "Mortgage"), a security agreement, financing statements, contracts, assurances, agreements, certifications and other documents and to take such other actions as may be necessary, desirable or appropriate to secure closing and funding of the Mortgage Loan and mortgage insurance of the same by the Secretary. The Project shall be the sole asset and business purpose of the Corporation.

- (a) No provision required by HUD to be inserted into this Certificate of Incorporation may be amended without prior HUD approval so long as HUD is the insurer or holder of the note.

(b) No provision of this Certificate of Incorporation that results in any of the following will have any force or effect without the prior written consent of HUD:

- i. Any amendment that modifies the term of the Corporation;
- ii. Any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional member;
- iii. Any amendment that in any way affects the note, mortgage, deed of trust or security deed, and security agreement on the Project or the Regulatory Agreement between HUD and the Corporation;
- iv. Any change in a guarantor of any obligation to the Secretary.

(c) The Corporation is authorized to execute a note, mortgage, deed of trust or security deed and security agreement in order to secure a loan to be insured by the Secretary and to execute the Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.

(d) Any incoming member of the Corporation must, as a condition of becoming a member of the Corporation, agree to be bound by the note, mortgage, deed of trust or security deed, security agreement, Regulatory Agreement and any other documents required in connection with the HUD-insured loan to the same extent and on the same terms as the other members.

(e) Notwithstanding any other provisions, upon any dissolution, no title or right to possession and control of the Project and no right to collect the fees for the Project shall pass to any person who is not bound by the Regulatory Agreement in a manner satisfactory to the Secretary.

(f) The members, officers and directors and any assignee of a member are liable in their individual capacity to HUD for:

- i. Funds or property of the Project coming into its possession, which by the provisions of the Regulatory Agreement the person or entity is not entitled to retain;
- ii. Its own acts and deeds, or acts and deeds of others which it has authorized, in violation of the provisions of the Regulatory Agreement;
- iii. The acts and deeds of affiliates, as defined in the Regulatory Agreement, which the person or entity has authorized in violation of the provisions of the Regulatory Agreement and;
- iv. As otherwise provided by law.

(g) The Corporation shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.

(h) The Corporation designates the Executive Committee of the Corporation as its official representatives for all matters concerning the Project which requires HUD consent or approval. The signature of any



person on the Executive Committee will bind the Corporation in all such matters. The Corporation may from time to time appoint a new representative to perform this function but, within three business days of doing so, will provide HUD with written notification of the name, address and telephone number of its new representative. When a person other than the Executive Committee has full or partial authority of management of the Project, the Corporation will promptly provide HUD with the name of that person and the nature of that person's management authority.

6. (a) The Certificate of Incorporation of SS Joachim & Anne Residence is further amended by changing the post office address to which the Secretary of State may mail a copy of process to "2720 Surf Avenue, Brooklyn, New York 11224."

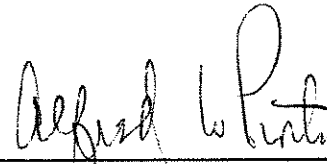
(b) To effect the foregoing, Article XII relating to the Secretary of State as agent the Corporation for service of process is amended to read as follows:

## XII

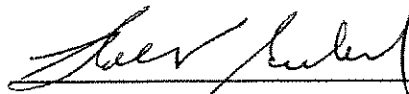
The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him is: 2720 Surf Avenue, Brooklyn, New York 11224.

7. This Amendment to the Certificate of Incorporation of SS Joachim & Anne Residence was authorized by a vote of a majority of the members of the Corporation at a meeting.
  
8. 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 of State shall mail a copy of any process against it served upon him is: 2720 Surf Avenue, Brooklyn, New York 11224.

In Witness Whereof, we have made, signed and verified this Amendment to the Certificate of Incorporation of SS Joachim & Anne Residence this 14<sup>th</sup> day of March, 2013.



\_\_\_\_\_  
Msgr. Alfred LoPinto  
President



\_\_\_\_\_  
Robert Siebel  
Vice President, ex officio





## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 1st day of August, 2013, approves the filing of the Certificate of Amendment of Certificate of Incorporation of SS Joachim & Anne Residence, dated March 14, 2013.



**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. *J. E. Dering* General Counsel

**DATE:** July 1, 2013

**SUBJECT:** Proposed Dissolution of St. Camillus Foundation, Inc.

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St. Camillus Foundation, Inc. (“the Foundation”) requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §§ 1002(c) and 1003, as well as 10 NYCRR Part 650.

The Foundation was formed in 1982. In 1997, its certificate of incorporation was amended to state that its purpose was to operate solely for the benefit of St. Camillus Residential Health Care Facility (“the Facility”)<sup>1</sup> and Integrity Home Care Services, Inc. (“the Home Care Agency”). According to the Foundation, it is no longer economically justifiable for it to bear overhead expenses such as paid staff, annual audited financial statements, and tax return filing. As a result, the Foundation’s trustees resolved that (1) the Foundation’s assets and liabilities should be transferred to the Facility, and (2) thereafter, the Foundation should be dissolved.

Attached is a copy the proposed Certificate of Dissolution, a letter from the Foundation’s attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution, and a proposed Verified Petition seeking the Supreme Court’s approval of the Foundation’s Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments

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<sup>1</sup> Note that St. Camillus Residential Health Care Facility was originally incorporated in 1974 as “St. Camillus Foundation.” In 1981, its name was changed to St. Camillus Residential Health Care Facility. In 1982, “St. Camillus Foundation, Inc.” was incorporated as a new and separate entity.

**CERTIFICATE OF DISSOLUTION  
OF  
ST. CAMILLUS FOUNDATION  
UNDER  
SECTION 1003  
OF THE  
NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW**

**MICHAEL J. BYRNE**, the Secretary of **ST. CAMILLUS FOUNDATION** (the "Corporation"), hereby certifies:

1. The name of the Corporation is **ST. CAMILLUS FOUNDATION**.
2. The name of the Corporation has not changed since it was formed.
3. The Certificate of Incorporation of the Corporation was filed by the New York State Department of State on October 28, 1982.
4. The Certificate of Incorporation of the Corporation was amended on January 16, 1998.
5. The names and addresses of the Foundation's Members are:

<b>NAME</b>	<b>ADDRESS</b>
Rev. Louis Aiello	6700 Kingsley Road Fayetteville, New York 13066
John Cannizzaro	202 Kenwick Drive Syracuse, New York 13208
Charles Conole	651 Stinard Avenue Syracuse, New York 13207
John J. Costello	76 East Genesee Street Skaneateles, New York 13152
Patricia Curtin	217 Falling Brook Path Fayetteville, New York 13066
Rev. Msgr. Charles Fahey	602 Loyola Hall Fordham University Bronx, New York 10458
Rev. Msgr. Richard Kopp	P. O. Box 511 Syracuse, New York 13201
James Murphy	101 Peridot Drive Syracuse, New York 13219
M. Catherine Richardson	233 Delhi Street Syracuse, New York 13203
James Spencer	6423 Cricklewood Lane Jamesville, New York 13078

**ST. CAMILLUS FOUNDATION  
CERTIFICATE OF DISSOLUTION**

<b>NAME</b>	<b>ADDRESS</b>
Mary Grace VanNortwick	4035 Libra Lane Liverpool, New York 13090

6. The name, address and title of each of the Trustees and Officers of the Foundation are:

<b>NAME</b>	<b>ADDRESS</b>	<b>TITLE</b>
Dr. Robert P. Anderson	4600 Whetstone Road Manlius, New York 13104	
Bonnie Arnold	8170 Whitman Way Liverpool, New York 13090	
Aileen Balitz	813 Fay Road Syracuse, New York 13219	Interim President
Miles Bottrill	117 Juneway Road Syracuse, New York 132154	
Michael J. Byrne	3415 East Lake Road Skaneateles, New York 13152	Secretary
Shirley Cruickshank	112 Jarrett Drive Syracuse, New York 13219	
John Maestri	400 Charles Avenue Solvay, New York 13209	
Scott McClurg	4435 Kasson Road Syracuse, New York 13215	Vice-Chairman
Karolan Pizio Munro	206 Natick Circle Camillus, New York 13031	
Scott Wakeman	7650 Farmington Road Manlius, New York 13104	Treasurer
JoAnn Wallace	6246 The Hamlet Jamesville, New York 13078	
Michael Zandri	Omnicare of Syracuse 342 Northern Lights Drive North Syracuse, New York 13212	

7. At the time of dissolution, the Corporation is a Type B New York not-for-profit corporation.
8. At the time of the authorization of the Corporation's Plan of Dissolution and Distribution of Assets and Liabilities pursuant to New York State Not-for-Profit Corporation Law §1002, the Corporation held assets that were legally restricted to be used for a particular purpose.



**ST. CAMILLUS FOUNDATION  
CERTIFICATE OF DISSOLUTION**

9. Pursuant to the Corporation's Plan of Dissolution and Distribution of Assets and Liabilities, as well as the Order of the Supreme Court, County of Onondaga, dated \_\_\_\_\_, 201\_\_, any assets of the Corporation that were legally restricted to be used for a particular purpose shall continue to be so restricted and shall be used only for such restricted purposes by St. Camillus Residential Health Care Facility, the recipient of the Corporation's assets and liabilities.
10. The Corporation elects to dissolve.
11. The Plan of Dissolution and Distribution of Assets and Liabilities of the Corporation was authorized by the unanimous vote of the Board of Trustees of the Corporation on October 15, 2012.
12. The Plan of Dissolution and Distribution of Assets and Liabilities of the Corporation was authorized by the unanimous vote of the Members of the Corporation pursuant to New York State Not-for-Profit Corporation Law §613(c) on October 26, 2012.
13. On \_\_\_\_\_, 201\_\_, the Honorable \_\_\_\_\_, a Justice of the New York State Supreme Court, County of Onondaga, issued an Order Approving the Plan of Dissolution and Distribution of Assets and Liabilities of the Corporation.
14. A copy of the Order is attached hereto as Exhibit 1 pursuant to New York State Not-for-Profit Corporation Law §1003(a)(8).
15. Attached to this Certificate of Dissolution is the approval of the New York State Public Health and Health Planning Council.
16. The Corporation has carried out the Plan of Dissolution and the distribution of its assets and liabilities.
17. Prior to filing this Certificate of Dissolution with the New York State Department of State, the endorsement of the New York State Attorney General will be attached hereto.

In witness whereof, the undersigned executed this Certificate of Dissolution of **ST. CAMILLUS FOUNDATION** on \_\_\_\_\_, 201\_\_.

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Michael J. Byrne

**ST. CAMILLUS FOUNDATION  
CERTIFICATE OF DISSOLUTION**

State of New York    )  
County of Onondaga ) ss.:

On \_\_\_\_\_, 201\_\_, before me personally came **MICHAEL J. BYRNE**, to me known, who, being by me duly sworn, did depose and say that he resides at 3415 East lake Road, Skaneateles, New York; that he is the Secretary of **ST. CAMILLUS FOUNDATION**, the New York not-for-profit corporation described in and which executed this Certificate of Dissolution; that he knows the seal of **ST. CAMILLUS FOUNDATION**; that the seal affixed to this Certificate of Dissolution is such corporate seal; that it was so affixed by authority of the Board of Trustees of **ST. CAMILLUS FOUNDATION**, and that he signed his name hereto by like authority.

---

Notary Public

BYRNE, COSTELLO & PICKARD, P.C.  
ATTORNEYS AT LAW

MICHAEL J. BYRNE  
TERRY R. PICKARD\*  
MATTHEW V. BYRNE III\*\*  
JOHN R. BRENNAN\*\*\*  
F. SCOTT MOLNAR\*\*\*  
ZEA M. WRIGHT  
JORDAN R. PAVLUS\*\*\*\*  
GREGORY P. BAZAN

MATTHEW V. BYRNE, JR.  
(1920-2000)

JOHN J. COSTELLO  
OF COUNSEL

\*ALSO MEMBER FLORIDA BAR  
AND MASSACHUSETTS BAR  
\*\*ALSO MEMBER FLORIDA BAR  
AND DISTRICT OF COLUMBIA BAR  
\*\*\*ALSO MEMBER MASSACHUSETTS BAR  
\*\*\*\*ALSO MEMBER DELAWARE BAR  
AND NEW JERSEY BAR

TOWER I  
100 MADISON ST., SUITE 1600  
SYRACUSE, N.Y. 13202-2721  
TELEPHONE: 315/474/6448  
TELECOPIER: 315/424-8556  
E-MAIL: MVBYRNE@BCPLEGAL.COM  
WWW.BCPLLEGAL.COM

MAY 31, 2013

*Dkt  
Received 6/5/13*

Justin D. Pfeiffer, Esq.  
Senior Attorney  
New York State Department of Health  
Bureau of House Counsel  
Corning Tower, Room 2482  
Albany, New York 12237-0026

**RE: ST. CAMILLUS RESIDENTIAL HEALTH CARE FACILITY  
ST. CAMILLUS FOUNDATION, INC.**

Dear Justin:

I am responding to your e-mail to me dated May 23, 2013. Please find a complete copy of it attached hereto as Exhibit 1.

This firm represents St. Camillus Residential Health Care Facility, Integrity Home Care Services, Inc. and St. Camillus Foundation.

1. St. Camillus RHCF ("St. Camillus") is a tax-exempt New York not-for-profit corporation which is authorized by the Public Health and Health Planning Council ("PHHPC") under Article 28 of the Public Health Law to operate a skilled nursing facility in Syracuse.
2. Integrity Home Care Services, Inc. ("Integrity") is a tax-exempt New York not-for-profit corporation which is authorized by PHHPC under Article 28 of the Public Health Law to operate a home care services agency in Onondaga County.

3. St. Camillus Foundation (the "Foundation") is a tax-exempt New York not-for-profit corporation which is authorized by PHHPC under Article 28 of the Public Health Law to raise funds on behalf of and for the benefit of St Camillus and Integrity.
4. All three entities are governed by a common Membership.

Over the past few years, the traditional fundraising model for a supporting organization such as the Foundation has changed. Quite simply, it is no longer economically justifiable for an institution like the Foundation to bear the overhead expenses of paid staff, annual audited financial statements, tax returns, etc. As a result, the Members who oversee St. Camillus, Integrity and the Foundation determined it will be in the best interests of St. Camillus and Integrity, the two operating entities, if the following occur:

1. The Foundation will seek approval from PHHPC, the Attorney General and the Supreme Court to dissolve and transfer its net assets to St. Camillus, to be used for the benefit of St. Camillus and Integrity; and
2. St. Camillus will seek approval from PHHPC, the Attorney General and the Supreme Court to amend its Certificate of Incorporation to allow St. Camillus to conduct fundraising activities on behalf of St. Camillus and Integrity.

#### **DISSOLUTION**

Pursuant to 10 NYCRR §650.1:

1. The public need will be served by the dissolution of the Foundation because it will diminish the overhead costs required to raise charitable contributions for St. Camillus and Integrity, allow a greater percentage of funds raised to be used directly for the programs provided by St. Camillus and Integrity, and lessen the burdens of government;
2. All assets currently held by the Foundation for the benefit of St. Camillus and Integrity will be transferred to St. Camillus, to be used for the benefit of St. Camillus and Integrity. All donor-restricted funds will retain their restriction and be used only for such restricted purposes;
3. Attached hereto as Exhibit 2 is a complete copy of the proposed Certificate of Dissolution for the Foundation;

4. Attached hereto as Exhibit 3 is a complete copy of the executed Plan of Dissolution and Distribution of Assets and Liabilities for the Foundation;
5. Attached hereto as Exhibit 4 is a complete copy of the Petition proposed to be submitted to the Supreme Court in support of the application for judicial approval of the proposed Plan of Dissolution and Distribution of Assets and Liabilities; and
6. Attached hereto as Exhibit 5 is a complete copy of the Foundation's financial statements as of April 30, 2013.

Please review these materials and, if they are acceptable to you, submit them to PHHPC, along with your legal review. If the submission is acceptable to PHHPC, I respectfully request it issue a letter authorizing the dissolution of the Foundation.

#### **CERTIFICATE OF AMENDMENT**

Pursuant to the requirements contained in Section IV of Department of Health web page [http://www.health.ny.gov/permits/cert\\_of\\_incorp\\_and\\_articles\\_of\\_org.htm](http://www.health.ny.gov/permits/cert_of_incorp_and_articles_of_org.htm) (copy enclosed as Exhibit 6), I submit the following to you:

1. Attached hereto as Exhibit 7 is a complete photocopy of the signed and dated proposed Certificate of Amendment.
  - a. The Certificate specifically identifies the names of the supported organizations in ¶11 of the Certificate.
  - b. The following language, in its entirety, is included in ¶13 of the Certificate:

Nothing in this Certificate of Amendment of the Certificate of Incorporation of St. Camillus Residential Health Care Facility 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, 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 (SSL); or
4. 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 Amendment of the Certificate of Incorporation of St. Camillus Residential Health Care Facility 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.
2. Attached hereto as Exhibit 8 is a complete photocopy of the Bylaws for St. Camillus.
  3. Attached hereto as Exhibit 9 is an executed original affidavit from the Secretary of St. Camillus and Liberty, the intended supported organizations, acknowledging they will accept funds raised for them by St. Camillus.
  4. In general, St. Camillus intends to continue to its fund raising initiatives, such as: fund raising dinners, fashion shows, outdoor picnics, races or walks, memorial donations, direct mail campaigns. In addition, it plans to make a concerted effort to encourage planned giving. Finally, it is also anticipated grant monies will be sought from outside charitable foundations, private companies, as well as State and Federal agencies.

**BYRNE, COSTELLO & PICKARD, P.C.**  
**MAY 31, 2013**  
**PAGE 5**

5. Attached hereto as Exhibit 10 is a complete list of the requisite information for the St. Camillus Board of Trustees.
6. Attached hereto as Exhibit 11 is an organizational chart for St. Camillus, Integrity and the Foundation. The three corporations are controlled by a common set of Members but have separate Boards of Trustees.
7. There are no entities which control, or are controlled by, St. Camillus.

Please review these materials and, if they are acceptable to you, submit them to PHHPC, along with your legal review. If the submission is acceptable to PHHPC, I respectfully request it issue a letter authorizing the filing of the Certificate of Amendment of the Certificate of Incorporation of St. Camillus Residential Health Care Facility.

Thank you very much for your assistance. If you have any questions, or if I may be of any further service to you, please contact me at your convenience.

Very truly yours,

**BYRNE, COSTELLO & PICKARD, P.C.**

  
Matthew V. Byrne III

MB3\ Letter to Mr. Pfeiffer  
cc: Mrs. Balitz, MJB  
enc: Listed materials

**PLAN OF DISSOLUTION  
AND  
DISTRIBUTION OF ASSETS AND LIABILITIES  
OF  
ST. CAMILLUS FOUNDATION  
UNDER  
SECTION 1001  
OF THE  
NEW YORK STATE NOT-FOR-PROFIT CORPORATION LAW**

Whereas, the Board of Trustees of St. Camillus Foundation (the "Foundation") met at a regular meeting duly convened on October 15, 2012, pursuant to a notice given in accordance with law; and

Whereas, a quorum was present at all times; and

Whereas, the Board of Trustees of the Foundation considered the advisability of voluntarily dissolving the Foundation; and

Whereas, after due deliberation, the Foundation's Board of Trustees unanimously determined that it is advisable and in the best interests of the Foundation to dissolve; and

Whereas, the Foundation's Board of Trustees thereupon adopted, by unanimous vote, the following Plan for the voluntary dissolution of the Foundation and the distribution of its assets and liabilities:

1. The Foundation was incorporated on October 28, 1982.
2. Pursuant to New York Not-For-Profit Corporation Law §201(b), the Foundation is a "Type B" charitable corporation.
3. Since it was originally incorporated, the Certificate of Incorporation of the Foundation was amended once, on January 16, 1998, to amend the charitable purposes of the Foundation.
4. Attached hereto as Exhibit 1 is a complete list of the assets and liabilities of the Foundation and their fair market value.
5. The Foundation has no other assets to distribute or liabilities to pay.
6. The assets of the Foundation are legally required to be used for charitable purposes.
7. Certain assets of the Foundation are restricted to be used for specific charitable purposes.



**ST. CAMILLUS FOUNDATION  
PLAN OF DISSOLUTION**

8. The proposed recipient of the Foundation's assets is:

St. Camillus Residential Health Care Facility (the "Facility")  
813 Fay Road  
Syracuse, New York 13219-3098

9. The Facility is a New York not-for-profit corporation which was incorporated on October 28, 1982.
10. The Facility is a "Type B" charitable corporation pursuant to New York Not-For-Profit Corporation Law §201(b).
11. The Facility is currently in existence and operating.
12. The Facility is recognized by the Internal Revenue Service as exempt from Federal income taxation pursuant to §501(c)(3) of the Internal Revenue Code of 1986, as amended.
13. The charitable purposes of the Foundation are:

To engage in such charitable activities as may be of benefit to aged persons and to:

- a. Receive and maintain a fund or funds of real or personal property, or both, and to use and apply the whole or any part thereof, either directly or by contributions to organizations duly authorized to carry on such charitable activities, including but not limited to the solicitation of contributions for purposes for which the approval of the New York State Public Health Council is required under Article 28 of the New York State Public Health Law. Nothing herein contained, however, shall authorize the Corporation, directly or indirectly, to maintain, establish or operate a residential health care facility, nor to undertake any of the activities specified in Section 404(b)-(n) and (p)-(s) and (u)-(v) of the New York State Not-For-Profit Corporation Law. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish or operate a hospital or to provide hospital service or health-related service, a

**ST. CAMILLUS FOUNDATION  
PLAN OF DISSOLUTION**

drug maintenance program, a certified home health agency, a health maintenance organization, or a comprehensive health services plan as defined in and governed by Articles 28, 33, 36 and 44, respectively, of the New York State Public Health Law; and

b. To operate solely for the benefit of, perform the functions of, or carry out the purposes of the following specified organizations:

i. **St. Camillus Residential Health Care Facility; and**

ii. **Integrity Home Care Services, Inc.**

Both of which are engaged in the provision of housing and/or health care to elderly persons, and both of which are exempt from Federal income taxation under §501(c)(3) of the Internal Revenue Code and are Type "B" Corporations under §201 of the New York State Not-for-Profit Corporation Law. Specifically, St. Camillus Foundation shall receive and maintain a fund or funds of real and personal property, or both, and use or apply the whole or any part thereof, either directly or indirectly, for the benefit of the corporations specified above.

Notwithstanding anything herein to the contrary, the Corporation shall exercise only such powers as are in furtherance of and consistent with the exempt purposes of organizations set forth in §501(c)(3) of the Internal Revenue Code and its Regulations as the same now exist or as they may be hereafter amended from time to time.

Notwithstanding any other provisions of these Articles, the Corporation is organized for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition purposes (but only if no part of its activities involve the providing of facilities or

**ST. CAMILLUS FOUNDATION  
PLAN OF DISSOLUTION**

equipment) or for the prevention of cruelty to children or animals as specified in §501(c)(3) of the Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under §501(c)(3) of the Internal Revenue Code of 1954.

No substantial part of the activities of the Corporation shall include the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Internal Revenue Code §501[h]) or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

14. The Trustees of the Facility have agreed by Resolution to use the Foundation's unrestricted assets for the charitable purposes for which the Facility was incorporated.
15. The Trustees of the Facility have agreed by Resolution to use the Foundation's restricted assets for the charitable purposes for which they were restricted.
16. The Foundation is a Membership Corporation, so after the Board of Trustees reviews and approves this Plan of Dissolution, it must be submitted to the Members of the Foundation for their approval as well.
17. The prior approval of the Foundation's Plan of Dissolution and Certificate of Dissolution is required of the Public Health and Health Planning Council of the New York State Department of Health.
18. After the Plan of Dissolution is approved by the Public Health and Health Planning Council, it will be submitted to the New York State Attorney General.
19. After the Plan of Dissolution is approved by the New York State Attorney General, it will be submitted to a Justice of the Supreme Court of the State of New York for approval.
20. Within two hundred seventy (270) days after the Plan of Dissolution is approved by a Justice of the Supreme Court of the State of New York, the Foundation shall carry out the Plan of Dissolution, pay its current liabilities and transfer its remaining assets and liabilities to the Facility.

**ST. CAMILLUS FOUNDATION  
PLAN OF DISSOLUTION**

21. After the Plan of Dissolution is completed, a Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the New York Not-for-Profit Corporation law shall be attached thereto before it is submitted to the New York State Secretary of State for filing.

**CERTIFICATION**

I, **MICHAEL J. BYRNE**, Secretary of St. Camillus Foundation, hereby certify under penalty of perjury that:

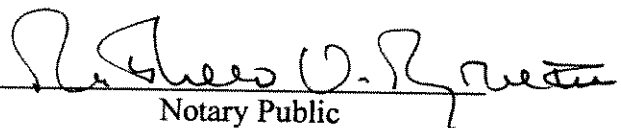
1. A regular meeting of the Board of Trustees of St. Camillus Foundation was duly held on October 15, 2012, at 813 Fay Road, Syracuse, New York and the Plan of Dissolution was duly submitted to and passed by the unanimous vote of the Board of Trustees of St. Camillus Foundation; and
2. On October 26, 2012, the Plan of Dissolution was submitted to a special meeting of the Members of St. Camillus Foundation who approved it by unanimous vote.

Dated: October 26, 2012

  
\_\_\_\_\_  
**MICHAEL J. BYRNE, SECRETARY**

State of New York     )  
County of Onondaga   ) ss.:

On October 26, 2012, before me personally came **MICHAEL J. BYRNE**, to me known, who, being by me duly sworn, did depose and say that he resides at 3415 East Lake Road, Skaneateles, New York; that he is the Secretary of St. Camillus Foundation, the not-for-profit corporation described in and which executed this Plan of Dissolution; that he knows the seal of St. Camillus Foundation; that the seal affixed to this Plan of Dissolution is such corporate seal; that it was so affixed by authority of the Board of Trustees of St. Camillus Foundation, and that he signed his name hereto by like authority.

  
\_\_\_\_\_  
Notary Public  
**MATTHEW V. BYRNE III**  
Notary Public, State of New York  
No. 02BY4951731  
Qualified in Onondaga County  
Commission Expires 05/30/2015

Supreme Court of the State of New York  
County of Onondaga

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In the Matter of the Application of

**ST. CAMILLUS FOUNDATION**

For Approval of its Plan of Dissolution  
And Distribution of its Assets and Liabilities  
pursuant to Section 1002 of the New York  
State Not-for-Profit Corporation Law.

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**VERIFIED PETITION**

**INDEX NUMBER: 2013-\_\_\_\_\_**

**R.J.I. NUMBER: \_\_\_\_-\_\_\_\_-\_\_\_\_\_**

To: The Honorable \_\_\_\_\_, Justice  
The Supreme Court of the State of New York  
County of Onondaga  
401 Montgomery Street  
Syracuse, New York 13202

Petitioner, **ST. CAMILLUS FOUNDATION** (the "Foundation"), by Michael J. Byrne, Secretary of the Foundation, for its Verified Petition herein respectfully alleges:

1. The Foundation was incorporated on October 28, 1982, pursuant to §402 of the New York State Not-for-Profit Law.
2. The Foundation's Certificate of Incorporation was amended on January 16, 1998, to amend the charitable purposes of the Foundation.
3. Attached hereto as Exhibits 1 and 2 are complete copies of the Foundation's Certificate of Incorporation and Certificate of Amendment.
4. The Foundation is listed as a constituent member institution of the Diocese of Syracuse in the current edition of "The Official Catholic Directory," commonly known as "The Kenedy Directory." (Please see attached Exhibit 3.)
5. Pursuant to the Internal Revenue Service's Group Exemption Ruling Letter dated June 27, 2012, the Foundation is, therefore, recognized by the Internal Revenue Service as exempt from Federal income taxation under §501(c)(3) of the Internal Revenue Code of 1986, as amended. (Please see attached Exhibit 4.)
6. The principal address of the Foundation is 813 Fay Road, Syracuse, New York.
7. The Foundation is registered with the Charities Bureau of the New York State Department of Law, Registration #03-46-91.

**VERIFIED PETITION OF ST. CAMILLUS FOUNDATION  
FOR APPROVAL OF ITS PLAN OF DISSOLUTION**

8. The names and addresses of the Foundation's Members are:

<b>NAME</b>	<b>ADDRESS</b>
Rev. Louis Aiello	6700 Kingsley Road Fayetteville, New York 13066
John Cannizzaro	202 Kenwick Drive Syracuse, New York 13208
Charles Conole	651 Stinard Avenue Syracuse, New York 13207
John J. Costello	76 East Genesee Street Skaneateles, New York 13152
Patricia Curtin	217 Falling Brook Path Fayetteville, New York 13066
Rev. Msgr. Charles Fahey	602 Loyola Hall Fordham University Bronx, New York 10458
Rev. Msgr. Richard Kopp	P. O. Box 511 Syracuse, New York 13201
James Murphy	101 Peridot Drive Syracuse, New York 13219
M. Catherine Richardson	233 Delhi Street Syracuse, New York 13203
James Spencer	6423 Cricklewood Lane Jamesville, New York 13078
Mary Grace VanNortwick	4035 Libra Lane Liverpool, New York 13090

9. The name, address and title of each of the Trustees and Officers of the Foundation are:

<b>NAME</b>	<b>ADDRESS</b>	<b>TITLE</b>
Dr. Robert P. Anderson	4600 Whetstone Road Manlius, New York 13104	
Bonnie Arnold	8170 Whitman Way Liverpool, New York 13090	
Aileen Balitz	813 Fay Road Syracuse, New York 13219	Interim President
Miles Bottrill	117 Juneway Road Syracuse, New York 132154	

**VERIFIED PETITION OF ST. CAMILLUS FOUNDATION  
FOR APPROVAL OF ITS PLAN OF DISSOLUTION**

<b>NAME</b>	<b>ADDRESS</b>	<b>TITLE</b>
Michael J. Byrne	3415 East Lake Road Skaneateles, New York 13152	Secretary
Shirley Cruickshank	112 Jarrett Drive Syracuse, New York 13219	
John Maestri	400 Charles Avenue Solvay, New York 13209	
Scott McClurg	4435 Kasson Road Syracuse, New York 13215	Vice-Chairman
Karolan Pizio Munro	206 Natick Circle Camillus, New York 13031	
Scott Wakeman	7650 Farmington Road Manlius, New York 13104	Treasurer
JoAnn Wallace	6246 The Hamlet Jamesville, New York 13078	
Michael Zandri	Omnicare of Syracuse 342 Northern Lights Drive North Syracuse, New York 13212	

10. The purposes for which the Foundation was organized are:

To engage in such charitable activities as may be of benefit to aged persons and to:

- a. Receive and maintain a fund or funds of real or personal property, or both, and to use and apply the whole or any part thereof, either directly or by contributions to organizations duly authorized to carry on such charitable activities, including but not limited to the solicitation of contributions for purposes for which the approval of the New York State Public Health Council is required under Article 28 of the New York State Public Health Law. Nothing herein contained, however, shall authorize the Corporation, directly or indirectly, to maintain, establish or operate a residential health care facility, nor to undertake any of the activities specified in Section 404(b)-(n) and (p)-(s) and (u)-(v) of the New York State Not-For-Profit

**VERIFIED PETITION OF ST. CAMILLUS FOUNDATION  
FOR APPROVAL OF ITS PLAN OF DISSOLUTION**

Corporation Law. Nothing contained in this Certificate of Incorporation shall authorize the Corporation to establish or operate a hospital or to provide hospital service or health-related service, a drug maintenance program, a certified home health agency, a health maintenance organization, or a comprehensive health services plan as defined in and governed by Articles 28, 33, 36 and 44, respectively, of the New York State Public Health Law; and

- b. To operate solely for the benefit of, perform the functions of, or carry out the purposes of the following specified organizations:
  - i. **St. Camillus Residential Health Care Facility; and**
  - ii. **Integrity Home Care Services, Inc.**

Both of which are engaged in the provision of housing and/or health care to elderly persons, and both of which are exempt from Federal income taxation under §501(c)(3) of the Internal Revenue Code and are Type "B" Corporations under §201 of the New York State Not-for-Profit Corporation Law. Specifically, St. Camillus Foundation shall receive and maintain a fund or funds of real and personal property, or both, and use or apply the whole or any part thereof, either directly or indirectly, for the benefit of the corporations specified above.

Notwithstanding anything herein to the contrary, the Corporation shall exercise only such powers as are in furtherance of and consistent with the exempt purposes of organizations set forth in §501(c)(3) of the Internal Revenue Code and its Regulations as the same now exist or as they may be hereafter amended from time to time.



**VERIFIED PETITION OF ST. CAMILLUS FOUNDATION  
FOR APPROVAL OF ITS PLAN OF DISSOLUTION**

Notwithstanding any other provisions of these Articles, the Corporation is organized for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition purposes (but only if no part of its activities involve the providing of facilities or equipment) or for the prevention of cruelty to children or animals as specified in §501(c)(3) of the Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under §501(c)(3) of the Internal Revenue Code of 1954.

No substantial part of the activities of the Corporation shall include the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Internal Revenue Code §501[h]) or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

11. A complete listing of the assets and liabilities of the Foundation is attached hereto as Exhibit 5.
12. The Foundation has no other assets to distribute or liabilities to pay.
13. The assets of the Foundation are legally required to be used for charitable purposes.
14. Certain assets of the Foundation are restricted for use in specific charitable purposes.
15. The proposed recipient of the Foundation's assets and liabilities is:  
  
St. Camillus Residential Health Care Facility (the "Facility")  
813 Fay Road  
Syracuse, New York 13219-3098
16. The Facility is a New York not-for-profit corporation which was incorporated on November 8, 1974.

**VERIFIED PETITION OF ST. CAMILLUS FOUNDATION  
FOR APPROVAL OF ITS PLAN OF DISSOLUTION**

17. The Facility's Certificate of Incorporation was amended on February 5, 1982, to amend the charitable purposes of the Foundation.
18. The Facility's Certificate of Incorporation was further amended on November 5, 1984 to amend the charitable purposes of the Facility.
19. Attached hereto as Exhibit 6 is the Affidavit of John J. Cannizzaro, a Trustee and Officer of the Facility, stating the charitable purposes of the Facility and that it is exempt from Federal income taxation.
20. Attached as exhibits to Mr. Cannizzaro's affidavit are complete copies of the following documents:
  - a. The Certificate of Incorporation and Certificates of Amendment for the Facility (Exhibits A, B and C);
  - b. The Official Catholic Directory, which lists the Facility as an instrumentality of the Roman Catholic Diocese of Syracuse New York (Exhibit D);
  - c. The Group Exemption Ruling Letter issued by the Internal Revenue Service to the United States Conference of Catholic Bishops on June 27, 2012 (Exhibit E);
  - d. The exemption from registration issued to the Facility by the Charities Bureau of the New York State Department of Law (Exhibit F); and
  - e. Internal Revenue Service Form 990's for the Facility for the most recent three years available (Exhibits G, H and I).
21. The Facility is a "Type B" charitable corporation pursuant to New York Not-For-Profit Corporation Law §201(b).
22. The Facility is currently in existence and operating.
23. The Directors and Members of the Foundation wish to distribute the assets and liabilities of the Foundation to the Facility in accordance with the Plan of Dissolution because they believe the Foundation's charitable purposes can be carried out more cost-effectively by the Facility.

**VERIFIED PETITION OF ST. CAMILLUS FOUNDATION  
FOR APPROVAL OF ITS PLAN OF DISSOLUTION**

24. The Facility is a charitable organization which has been and continues to be a direct beneficiary of the Foundation's charitable activities.
25. A regular meeting of the Board of Trustees of the Foundation was held pursuant to a duly-given notice at 7:00 A.M. on October 15, 2012, at which time a Resolution was duly passed by the unanimous vote of the Trustees of the Foundation adopting a Plan of Dissolution and authorizing the filing of a Certificate of Dissolution in accordance with New York State Not-for-Profit Corporation Law §1003.
26. The Plan of Dissolution adopted by the Board of Trustees of the Foundation was then submitted to a vote of the Members of the Foundation as required by New York State Not-for-Profit Corporation Law §1002(a).
27. A special meeting of the Members of the Foundation was held pursuant to a duly-given notice at 11:00 A.M. on October 26, 2012, at which time a Resolution was duly passed by the unanimous vote of the Members of the Foundation approving the Plan of Dissolution and authorizing the filing of a Certificate of Dissolution in accordance with New York State Not-for-Profit Corporation Law §1003.
28. A certified copy of the Plan of Dissolution, as approved by the Trustees and Members of the Foundation, is attached hereto as Exhibit 7.
29. Certified copies of the Resolutions of the Trustees and Members of the Foundation approving the dissolution of the Foundation are attached hereto as Exhibit 8.
30. The approval of the Certificate of Dissolution of the Foundation is required by the New York State Public Health and Health Planning Council.
31. Attached hereto as Exhibit 9 is the approval of the New York State Public Health and Health Planning Council for the Certificate of Dissolution of the Foundation.
32. On \_\_\_\_\_, 2013, a certified copy of the Foundation's Plan of Dissolution was submitted to the Office of the New York State Attorney General.
33. Attached hereto as Exhibit 10 is the approval of the New York State Attorney General for the dissolution of the Foundation.
34. Submitted herewith is a proposed Order Approving the Plan of Dissolution.

**VERIFIED PETITION OF ST. CAMILLUS FOUNDATION  
FOR APPROVAL OF ITS PLAN OF DISSOLUTION**

35. No previous application for approval of the Plan of Dissolution of the Foundation has been made.

**WHEREFORE**, Petitioner respectfully requests that the Court grant an Order Approving the Plan of Dissolution of **ST. CAMILLUS FOUNDATION**, a not-for-profit corporation, pursuant to New York State Not-for-Profit Corporation Law §1002.

**IN WITNESS WHEREOF**, **ST. CAMILLUS FOUNDATION** caused this Petition to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by Michael J. Byrne, Secretary of the Foundation.

\_\_\_\_\_  
**MICHAEL J. BYRNE, SECRETARY**

**VERIFICATION**

State of New York     )  
County of Onondaga ) ss.:

Michael J. Byrne, being duly sworn, deposes and says:

I am the Secretary of **ST. CAMILLUS FOUNDATION**, the corporation named in the above Petition. I make this verification at the direction of its Board of Trustees. I have read the foregoing Petition and know the contents thereof to be true of my knowledge, except those matters that are stated to be upon information and belief and as to those matters I believe them to be true.

\_\_\_\_\_  
**MICHAEL J. BYRNE, SECRETARY**

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public

## RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 1<sup>st</sup> day of August, 2013, approves the filing of the Certificate of Dissolution of St. Camillus Foundation, Inc., dated as attached.

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: 3 Angels Care, Inc.  
Address: South Ozone Park  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2056-L

Description of Project:

3 Angels 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 Paulette Davis.

The Board of Directors of 3 Angels Care, Inc. comprises the following individuals:

Paulette Davis, Chairperson, Secretary Certified Nurse Aide, Mercy Hospital	Denise Sinclair, Vice Chairperson Nurse Aide, St. John's Hospital
--	--

Rosita Setal, Treasurer  
Comptroller, Shiloh Baptist Church

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 134 20 Rockaway Boulevard, South Ozone Park, New York 11420:

Queens                      Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 24, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Allstar Homecare Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 1929-L

Description of Project:

Allstar Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Wai Man Liu owns 50 shares, Ting Zhang owns 50 shares, Siu Ming Lau owns 50 shares and Linh H. Dang owns 50 shares.

The Board of Directors of Allstar Homecare Agency, Inc. comprises the following individuals:

Wai Man Liu, HHA, PCA, President  
Owner/President, R & S Fortune, Inc.

Ting Zhang, Vice President  
Director, Kings Institute (5/08 – 8/12)

Siu Ming Lau, HHA, PCA, Member  
Coordinator  
Director of After School Program,  
Angel Advantage Center, Inc.

Linh H. Dang, Member  
Systems Automation Support Specialist,  
U.S. Pretrial Services Office

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 762 59<sup>th</sup> Street, Suite 501, Brooklyn, New York 11220:

New York  
Bronx

Kings  
Richmond

Queens  
Westchester

The applicant proposes to provide the following health care services:

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

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: June 20, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley  
Address: Suffern  
County: Rockland  
Structure: For-Profit Corporation  
Application Number: 1967-L

Description of Project:

DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

DBN Partners, Inc. has proposed to operate as a Franchisee of Always Best Care Senior Services.

The applicant has authorized 2,500 shares of stock, which are owned as follows:

DBN Partners, Inc. Profit Sharing Plan – 1,494.21 shares	Donna M. Napotnik – 5.77 Shares Franchise Owner/Operator DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley
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1,000.02 shares remain unissued.

The sole trustee of DBN Partners, Inc. Profit Sharing Plan is Donna M. Napotnik (Previously Disclosed).

The Board of Directors of DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley comprises the following individual:

Donna M. Napotnik – President/Director  
(Previously Disclosed)

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 88 Bon Aire Circle, T-2, Suffern, New York 10901.

Orange                      Rockland

The applicant proposes to provide the following health care services:

Nursing                      Personal Care                      Home Health Aide

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: June 20, 2013



Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Entire Care, Inc.  
Address: Rego Park  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2057-L

Description of Project:

Entire Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Ludmila Korogodsky owns 68 shares, Igor Korogodskiy owns 66 shares and Arkadiy Izrailov owns 66 shares.

The Board of Directors of Entire Care, Inc. comprises the following individuals:

Ludmila Korogodsky, President Medical Social Worker, Personal Touch, Inc.	Igor Korogodsky, Esq., Secretary CEO, IGK, Inc. (internet sales business)
--	--

Arkadiy Izrailov, M.D., Treasurer  
Director of Operations, Medical Care, PLLC

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professional associated with this application.

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 62-24 Ellwell Crescent, Rego Park, New York 11374:

Kings	Queens	New York
Westchester	Bronx	Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 24, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: F.A.B., LLC d/b/a F.A.B. Home Care Services  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2170-L

Description of Project:

F.A.B., LLC d/b/a F.A.B. Home Care Services, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

F.A.B., LLC d/b/a F.A.B. Home Care Services is composed of the following member:

Faith A. Bernal, R.N., 100%  
President/CEO, F.A.B., LLC d/b/a F.A.B. Nursing Services  
(private duty nursing)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 4024 Hubbard Place, Brooklyn, New York 11210:

Kings	Queens	New York
Richmond	Bronx	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Homemaker	Respiratory Therapy	Medical Social Services
Nutrition	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: June 18, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Hand in Hand Home Care, LLC  
Address: Bronx  
County: Bronx  
Structure: Limited Liability Company  
Application Number: 1801-L

Description of Project:

Hand in Hand 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.

Hand in Hand Home Care, LLC is composed of the following member:

Susan S. Khemraj, R.N., 100%  
R.N., Manhattan Psychiatric Center

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1064 White Plains Road, Bronx, New York 10412:

Bronx	Queens	Kings
New York	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 18, 2013



Division of Home & Community Based Care  
Character and Competence Staff Review

Name of Agency: Li Bo Lui d/b/a Union Health Care  
Address: East Elmhurst  
County: Queens  
Structure: Sole Proprietorship  
Application Number: 2005-L

Description of Project:

Li Bo Lui d/b/a Union Health Care, a sole proprietor, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole proprietor of Union Health Care is the following individual:

Li Bo Lui, HHA, PCA  
Owner/Director Qiaolin Arts World

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 31-18 80 Street, 3<sup>rd</sup> Floor, East Elmhurst, New York 11370:

Bronx                      Kings                      New York                      Queens                      Nassau

The applicant proposes to open a second site to be located in Nassau County to serve the residents of the following counties after the main site has had a successful operational survey.

Suffolk                      Nassau

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      Physical Therapy                      Medical Social Services  
Homemaker                      Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: April 18, 2013

Division of Home & Community Based Care  
Character and Competence Staff Review

Name of Agency: Maxcare, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2049-L

Description of Project:

Maxcare, 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 Maxcare, LLC comprises the following individuals:

Emmanuel I. Ngwu, RN – 51%	Charles E. Ngwu, RN – 49%
Registered Nurse, Visiting Nurse Association of Brooklyn, NY	Registered Nurse, Visiting Nurse Association of Brooklyn, NY

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professionals associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 3122 Fulton Street, Brooklyn, New York 11208:

Bronx                      Kings                                      New York                                      Queens                                      Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Physical Therapy	Medical Social Services
Nutrition	Occupational Therapy			

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: June 18, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: New Vision Home Care Services, LLC  
Address: Croton on Hudson  
County: Westchester  
Structure: Limited Liability Company  
Application Number: 2085-L

Description of Project:

New Vision Home Care Services, 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 New Vision Home Care Services, LLC are as follows:

Samuel L. Foreste, 50%  
Workstation Engineer, Westchester County Department of Information Technology

Natacha Claude-Foreste, HHA, CNA, 50%  
Self employed

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 420 South Riverside Avenue, Suite #258, Croton on Hudson, New York 10520.

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: June 24, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: All American Homecare Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit  
Application Number: 2064-L

Description of Project:

All American Homecare Agency, Inc., a for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Town Total Nutrition, Inc d/b/a Critical Care Nursing Staffing Agency was previously approved as a home care services agency by the Public Health Council at its May 25, 1990 meeting and subsequently licensed as 9067L001 and 9067L002. The change of ownership requested in this application is for the agency currently licensed as 9067L002.

On May 23<sup>rd</sup>, 2011 Town Total Nutrition, Inc. solely owned by John Narrava entered into an Asset Sale Agreement with All American Homecare Agency, Inc. by its President Marina Shtaynberg. On July 14, 2011 Marina Shtaynberg sold 100% of the stock of All American Homecare Agency, Inc. and reassigned all her rights in All American Home Care Agency, Inc. relating to the agreement with Town Total Nutrition to Zoya Bolucher.

Town Total Nutrition, Inc. has entered into a management agreement with All American Homecare Agency, Inc. which was approved by the Department of Health on January 30, 2012.

The applicant has authorized 200 shares of stock, which are owned as follows:

Zoya Bolucher – 200 Shares

The Board of Directors of All American Homecare Agency, Inc. comprises the following individual:

Zoya Bolucher, PCA, Phlebotomy Technician – President  
Personal Care Aide, Helping Hands Attendant Services

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 PCA, currently employed as a PCA and has no convictions or findings

The applicant proposes to serve the residents of the following counties from an office located at 1113 Avenue J, 2<sup>nd</sup> Floor, Brooklyn, New York 11230:

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
Occupational Therapy	Physical Therapy	Nutrition	Speech-Language Pathology
Homemaker	Housekeeper	Respiratory Therapy	Audiology
DME			



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: June 20, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Medford Hamlet LLC d/b/a Medford Hamlet Home Care  
Address: Medford  
County: Suffolk  
Structure: Limited Liability Company  
Application Number: 2181-L

Description of Project:

Medford Hamlet LLC d/b/a Medford Hamlet Home Care, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law. This LHCSA is associated with Medford Hamlet Assisted Living Program.

Medford Hamlet LLC d/b/a Medford Hamlet Home Care was previously approved as a home care services agency by the Public Health Council at its September 22, 1995 meeting and subsequently licensed as 9499L001. At that time it was equally owned by four members, Sidney Krugman, Vincent Filaski, Florence Filaski and Esther Benenson.

Sidney Krugman has withdrawn from the LLC and is returning his one-sixth membership to Medford Hamlet, LLC through an assignment and assumption agreement.

The operator proposes to add four new members, each of whom will purchase a 1/24th share from the company.

The members of the Medford Hamlet LLC d/b/a Medford Hamlet Home Care comprise the following individuals:

Esther Beneson – Managing Member – 50%	Florence Filaski – Managing Member – 16.67%
Vincent Filaski – Managing Member – 16.67%	Joshua M. Benenson – Managing Member – 4.17% Member, FilBen Development, LLC
Michael J. Benenson, NHA – Managing Member – 4.17% Manager, FilBen Development, LLC Chairman of the Board, Care Next Insurance, Inc.	Richard V. Filaski – Managing Member – 4.17% Member & Manager, Lask Building Member & Manager, FilBen Development, LLC

Affiliations:

- Flushing Manor Dialysis Center  
(2008 – Present)
- Flushing Manor Geriatric Center  
(1996 – Present)
- Flushing Manor Nursing Home  
(July 2008 – Present)
- Flushing Manor Care Center  
(July 1974 – Present)
- Manhattanville Health Care Center  
(1980 – January 2005)

David V. Filask – 4.17%  
Member & Manager, FilBen Development, LLC  
Project Manager, Lask Building

Esther Beneson, Florence Filaski and Vincent Filaski are exempt from Character and Competence as individuals previously approved by the Public Health Council for this operator.



RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 1st day of August, 2013, 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>
2056-L	3 Angels Care, Inc. (Queens and Nassau Counties)
2047-L	AIM Services, Inc. (Albany, Warren, Schenectady, Washington, Rensselaer, Fulton, Saratoga and Montgomery Counties)
1929-L	Allstar Homecare Agency, Inc. New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)
1967-L	DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley (Orange and Rockland Counties)

2057-L Entire Care, Inc.  
(Kings, Westchester, Queens, Bronx, New York, and Richmond Counties)

2170-L F.A.B., LLC d/b/a F.A.B. Home Care Services  
(Kings, Richmond, Queens, Bronx, and New York Counties)

1801-L Hand in Hand Home Care, LLC  
(Bronx, New York, Queens, Richmond, and Kings Counties)

2101-L HomeCare Solutions, Inc.  
(Nassau, Suffolk, and Queens Counties)

2005-L Li Bo Lui d/b/a Union Health Care  
(Bronx, Kings, new York, Queens, and Nassau Counties)

2049-L Maxcare, LLC  
(Bronx, Kings, New York, Queens, and Richmond Counties)

2085-L New Vision Home Care Services, LLC  
(Westchester County)

2064-L All American Homecare Agency, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)

2253-L Home Aides of Central New York, Inc.  
(Onondaga, Cortland, Oswego, Oneida, Madison and Cayuga Counties)

2181-L Medford Hamlet LLC d/b/a Medford Hamlet Home Care  
(Nassau, Suffolk and Queens Counties)

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

**August 1, 2013**

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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**

**Ambulatory Surgery Centers – Establish/Construct**

**Exhibit #15**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	131026 B	Central New York ASC, LLC d/b/a OMNI Outpatient Surgery Center (Oneida County) Mr. Booth - Interest	Contingent Approval
2.	131085 E	Heritage One Day Surgery (Onondaga County) Mr. Booth - Interest	Contingent Approval

**Certified Home Health Agencies – Establish/Construct**

**Exhibit #16**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	122304 E	First To Care Home Care Inc (Kings County) Mr. Fassler - Interest	Contingent Approval

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #17**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
2047-L	AIM Services, Inc. (Albany, Warren, Schenectady, Washington, Rensselaer, Fulton, Saratoga and Montgomery Counties) Dr. Rugge - Recusal	Contingent Approval
2253-L	Home Aides of Central New York, Inc. (Onondaga, Cortland, Oswego, Oneida, Madison and Cayuga Counties) Mr. Booth - Interest	Contingent Approval



# Public Health and Health Planning Council

## Project # 131026 B Central New York ASC, LLC d/b/a OMNI Outpatient Surgery Center

**County:** Oneida County (Clinton)  
**Purpose:** Establishment and Construction

**Program:** Diagnostic and Treatment Center  
**Submitted:** January 11, 2013

### Executive Summary

#### Description

Central New York ASC, LLC d/b/a OMNI Outpatient Surgery Center, a to-be-formed limited liability company, requests approval for the establishment and construction of a single-specialty freestanding ambulatory surgical center (FASC) to provide interventional pain management services. The center will be located at 7887 Seneca Turnpike, Clinton. The center will consist of four operating rooms, twelve prep/holding stations, twenty recovery stations, ancillary space and appropriate support space. The center will be staffed with five physicians; four board certified in pain management and one board certified in anesthesiology. Proposed member, Nameer Haider, M.D. currently operates a private practice, Advanced Physical Medicine and Rehabilitation, PLLC, (APMR) specializing in physical medicine and rehabilitation. The private practice will continue upon approval for office consultations and services.

The proposed members of OMNI Outpatient Surgery Center are Nameer Haider, M.D. (86%), Zain Haider (10%), Robert Tiso, M.D. (2%) and Joseph Catania, M.D. (2%). Presented as BFA Attachment A, is the organizational chart.

#### DOH Recommendation

Contingent approval is recommended for a limited life of five years.

#### Need Summary

OMNI Outpatient Surgery Center's projected caseload represents cases currently performed by physicians practicing at two sites owned by APMR. Of the approximately 7,300 cases performed by APMR physicians last year, only 22 were performed in a hospital outpatient setting. The proposed project will consolidate much of APMR's interventional pain

management case volume from its two office sites. The number of projected visits is 4,987 in Year 1 and 6,188 in Year 3.

#### Program Summary

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

#### Financial Summary

Total project costs of \$4,653,847 will be met with a \$3,320,000 bank loan, \$455,190 equipment loan, \$275,407 promissory note and \$603,250 in member's equity.

Budget:	Revenues:	\$4,853,409
	Expenses:	<u>3,473,259</u>
	Net Income:	\$1,380,150

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 comment from the HSA for this application.

Office of Health Systems Management

Approval with an expiration of the operating certificate five years from the date of its issuance is recommended, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department of Health beginning in the second year of operation.  
These reports should include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payor source;
  - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided; and
  - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement, 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 an executed construction loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment that is acceptable to the Department of Health. [BFA]
8. Submission of an executed equipment purchase agreement that is acceptable to the Department of Health. [BFA]
9. Submission of an executed promissory note that is acceptable to the Department of Health. [BFA]
10. Submission of executed personal loan documentation from Nameer Haider, M.D. to satisfy his proportionate share of the equity contribution that is acceptable to the Department of Health. [BFA]
11. 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 March 15, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

**August 1, 2013.**

## Need Analysis

### Background

Central New York ASC, LLC is seeking approval for the establishment and construction of an Article 28 diagnostic and treatment center, OMNI Outpatient Surgery Center, to provide single-specialty ambulatory surgery services specializing in interventional pain management services. The proposed freestanding single-specialty ASC will be located at 7887 Seneca Turnpike, Clinton, 13323, in Oneida County.

### Analysis

The service area corresponds to the service area of Advanced Physical Medicine & Rehabilitation, PLLC. Approximately 77 percent of the patients reside in Oneida County; 12 percent in Herkimer County, and 8 percent in Madison, Chenango, or Lewis Counties.

Oneida County has two freestanding single-specialty ASCs as follows:

Type	Facility	2011
Single-Specialty	Griffiss Eye Surgery Center (Opened 1/3/2012)	n/a
Single-Specialty	Mohawk Valley Endoscopy Center	737
Multi-Specialty	None	

Source: SPARCS, 2011

Central New York 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 also acceptable to the Department.

Central New York ASC is committed to serving all individuals regardless of their ability to pay.

### Conclusion

Approval of this project would bring the affected procedures into a regulated Article 28 setting and subject them to the associated surveillance and quality controls.

### Recommendation

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

## 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>	Central New York ASC LLC
<b>Doing Business As</b>	OMNI Outpatient Surgery Center
<b>Site Address</b>	7887 Seneca Turnpike, Clinton
<b>Surgical Specialties</b>	Single Specialty: Pain Management
<b>Operating Rooms</b>	4
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 5:00 pm (Extended as necessary to accommodate patient needs).
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	13 FTEs / 20 FTEs
<b>Medical Director(s)</b>	Nameer Haider
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by St. Elizabeth Medical Center 5.54 miles/11 minutes
<b>On-call service</b>	The patient will be instructed to call his or her physician's service.

## Character and Competence

The members of the LLC are:

<b>Name</b>	
Nameer Haider, MD	86%
Zain Haider	10%
Robert L. Tiso, MD	2%
Joseph A. Catania, MD	2%

Three of the members are practicing surgeons. The fourth, Zain Haider, is the Director of Operation at a private medical practice.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's 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. Catania disclosed two settled malpractice cases. Dr. Tiso disclosed one settled and two pending malpractice cases.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

## Integration with Community Resources

The applicant indicates that it is the practice of the physicians who will be members of the facility's medical staff to encourage the establishment of a primary care relationship for those patients who do not have one. The facility plans to reach out to primary care physicians in its service area both to inform them of the facility and its capabilities and to facilitate the coordination of care for common patients. Additionally, patients will not be excluded based on ability to pay and charity care will be provided.

The facility will consider becoming a part of an Accountable Care Organization or Health Home if any develop in the Utica area. The facility will use an electronic medical record system and will consider participating in the HealtheConnections RHIO.

## Recommendation

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

# Financial Analysis

## Lease Rental Agreement

The applicant will lease approximately 16,900 square feet of space in a to-be-constructed building located at 7887 Seneca Turnpike, Clinton under the terms of the executed lease agreement summarized below:

Date:	December 31, 2012
Landlord:	OMNI ASC Realty, LLC
Lessee:	Central New York ASC, LLC d/b/a OMNI Outpatient Surgery Center
Term:	Ten years with the option to renew for two additional five year terms.
Rental:	\$338,000/year (\$20.00 per sq. ft.)
Provisions:	The lessee will be responsible for utilities, insurance, maintenance and taxes.

Upon CON approval, the landlord, OMNI ASC Realty, LLC, whose members are brothers Nameer Haider, M.D. and Zain Haider will construct a building shell and appurtenant facilities including parking areas and landscaping. The applicant will be constructing the remainder of the building to fulfill space requirements as an ambulatory surgery center.

The applicant has indicated that there is common membership interest between the landlord and lessee. Therefore, the lease will be a non-arm's length agreement and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness. The center will occupy the entire building.

#### Equipment Purchase Agreement

A proposed equipment purchase agreement has been submitted by the applicant summarized below:

Seller:	Advanced Physical Medicine & Rehabilitation, PLLC
Buyer:	Central New York ASC, LLC d/b/a OMNI Outpatient Surgical Center
Assets Purchased:	Certain equipment used to equip and operate a surgical suite free and clear of all liens, security interests, claims and encumbrances.
Purchase Price:	\$275,407
Payment:	Promissory note payable over five years with a 2.4% interest rate.

The promissory note agreement will be between Advanced Physical Medicine & Rehabilitation, PLLC and Central New York ASC, LLC d/b/a OMNI Outpatient Surgical Center. Presented as BFA Attachment B, is a financial summary of Advanced Physical Medicine & Rehabilitation, PLLC which shows sufficient funds available.

#### Total Project Cost and Financing

Total project costs for new construction and movable equipment are estimated at \$4,653,847, broken down as follows:

New Construction	\$3,045,710
Design Contingency	304,570
Construction Contingency	152,285
Architect/Engineering Fees	288,790
Consultant Fees	30,900
Movable Equipment	695,597
Telecommunications	36,050
Interim interest Expense	72,500
Application Fee	2,000
Additional Processing Fee	<u>25,445</u>
Total Project Cost	\$4,653,847

Project cost is based on an October 15, 2013 construction start date and a six and a half month construction period. The applicant's financing plan appears as follows:

Member's Equity	\$603,250
Construction Loan (15yrs, 4.40%)	\$3,320,000
Equipment Loan (5yrs, 4.40%)	\$455,190
Promissory Note (5yrs, 2.4%)	\$275,407

A letter of interest from M & T Bank has been submitted by the applicant.

## Operating Budget

The applicant has submitted an operating budget in 2013 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$4,028,025	\$4,853,409
Expenses:		
Operating:	\$2,053,866	2,568,787
Capital:	<u>959,050</u>	<u>904,472</u>
Total Expenses:	\$3,012,916	\$3,473,259
Net Income:	\$1,015,109	\$1,380,150
Utilization: (procedures)	4,987	6,188
Cost per procedure	\$604.15	\$561.29

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

	<u>Year One</u>	<u>Year Three</u>
Commercial Fee-for-Service	42.6%	45.8%
Medicare Fee-for-Service	12.2%	16.4%
Medicare Managed Care	2.3%	1.9%
Medicaid Managed Care	6.2%	5.2%
Private Pay	2.4%	2.0%
Workers Compensation	31.9%	26.7%
Charity Care	2.4%	2.0%

Expenses and utilization assumptions are based on the historical experience of the existing private practice. Each physician has provided a referral letter in support of utilization projections.

## Capability and Feasibility

Total project cost of \$4,653,847 will be met through a \$3,320,000 construction loan at stated terms, a \$455,190 equipment loan at stated terms, a \$275,407 promissory note at stated terms and the remaining \$603,250 from proposed member's equity.

Presented as BFA Attachment C, is the net worth statement of the proposed members, which indicates the availability of sufficient funds. Dr. Haider has submitted a letter of interest from M&T Bank for a personal loan to satisfy his proportionate share of equity contribution.

Working capital contributions are estimated at \$578,876 based on two months of third year expenses, and will be satisfied with a working capital loan in the amount of \$270,000 at an interest rate of 4.4% for 5 years, for which a letter of interest has been provided by M&T Bank. The remainder \$308,876 will be provided as equity by the proposed members. Presented as BFA Attachment D, is the pro-forma balance sheet of OMNI Outpatient Surgery Center as of the first day of operation, which indicates positive member's equity position of \$910,575.

The submitted budget indicates a net income of \$1,015,109 and \$1,380,150 during the first and third years of operation, respectively. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

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

## Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary, Advanced Physical Medicine & Rehabilitation, PLLC
BFA Attachment C	Net worth statement of proposed members
BFA Attachment D	Pro-forma Balance Sheet
BHFP Attachment	Map

## Supplemental

### Omni Outpatient Surgery Center CON #131026

#### Supplemental Information

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:** Rome Memorial Hospital  
1500 North James Street  
Rome, New York 13440

No response:

**Facility:** St. Elizabeth's Medical Center  
2209 Genesee Street  
Utica, New York 13501

No response.

**Facility:** Faxton-St. Luke's Healthcare  
1656 Champlin Avenue  
Utica, New York 13502

No response.

#### Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that the proposed ASC's caseload will be exclusively patients of Advance Physical Medicine & Rehabilitation (APMR), an office-based practice with two sites in Utica. The applicant anticipates that the efficiencies and convenience of the proposed ASC will also attract patients.

**Staff Recruitment and Retention:** The applicant expects that most, if not all, of the proposed ASC's clinical personnel will come from APMR. Additional staffing requirements, if any, will be handled by recruitment from accredited schools and training programs and through advertisements in local

newspapers and professional publications. To retain skilled staff, the applicant plans to offer competitive salaries and benefits and to maintain good human resource and communication systems. In addition, the proposed ASC will provide a positive work environment and flexible working hours.

**Office-Based Cases:** The applicant states that virtually 100 percent of the projected procedure volume for the proposed ASC is currently performed in the office setting (APMR). In 2012, APMR performed fewer than 25 cases at St. Elizabeth's Medical Center and eight cases at Faxton-St. Luke's Healthcare. No cases were performed at Rome Memorial Hospital.

### **OHSM Comment**

In the absence of comments from area hospitals, the Department finds no basis to consider reversal or modification of the recommendation for limited life 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 1st day of August, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty ambulatory surgery center to provide interventional pain management services located at 7887 Seneca Turnpike, Clinton, 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:

131026 B

FACILITY/APPLICANT:

Central New York ASC, LLC d/b/a OMNI  
Outpatient Surgery 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 beginning in the second year of operation.  
These reports should include:
  - Data showing actual utilization including procedures;
  - Data showing breakdown of visits by payor source;
  - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - Data showing number of emergency transfers to a hospital;
  - Data showing percentage of charity care provided; and
  - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
4. Submission of a statement, 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 an executed construction loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment that is acceptable to the Department of Health. [BFA]
8. Submission of an executed equipment purchase agreement that is acceptable to the Department of Health. [BFA]
9. Submission of an executed promissory note that is acceptable to the Department of Health. [BFA]
10. Submission of executed personal loan documentation from Nameer Haider, M.D. to satisfy his proportionate share of the equity contribution that is acceptable to the Department of Health. [BFA]
11. 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 March 15, 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:

Barbara DelCogliano  
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 # 131085 E Heritage One Day Surgery

**County:** Onondaga County  
**Purpose:** Establishment

**Program:** Ambulatory Surgery Center  
**Submitted:** February 18, 2013

### Executive Summary

#### Description

Heritage One Day Surgery, LLC (Heritage) located in Onondaga County, is an existing diagnostic and treatment center that is certified as a single specialty freestanding ambulatory surgical center (FASC) in the discipline of pain management. This application proposes to add two new members.

The current and proposed membership interest of Heritage is as follows:

<u>Current Member</u>	<u>% Interest</u>
Robert L. Tiso, MD	33.333%
Eric A. Tallarico, MD	33.333%
Joseph A. Catania, MD	33.334%

<u>Proposed Member</u>	<u>% Interest</u>
Robert L Tiso, MD	24.25%
Eric A. Tallarico, MD	24.25%
Joseph A. Catania, MD	24.25%
Mary Trusilo, MD	24.25%
Rina D Bernstein, MD (practicing as Rina C Davis, MD)	3.00%

Dr. Trusilo and Dr. Rina Bernstein (practicing as Dr. Rina Davis), have agreed to purchase, and Drs. Tiso, Catania and Tallarico have agreed to sell, 24.25% membership interest in the company to Dr. Trusilo for a purchase price of \$1,804,650 and a 3% membership interest in the company to Dr. Bernstein (practicing as Dr. Davis) for a purchase price of \$223,256.

DOH Recommendation  
Contingent approval

#### Need Summary

Because this project involves only a change in ownership arrangements, there will be no need recommendation for this application.

#### Program Summary

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

#### Financial Summary

There are no project costs associated with this application.

The purchase price of \$1,804,650 (Dr. Trusilo) and \$223,256 (Dr. Bernstein), respectively, will each be met by a bank loan at 5.25%, three year term. Letters of interest have been submitted.

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 HSA has no comment on the recommendation of this application.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Membership Assignment Agreement that is acceptable to the Department of Health. [BFA]
2. Submission of the applicant's amended operating agreement, acceptable to the Department. [CSL]
3. Submission of an executed agreement between Syracuse Orthopedic Specialists, P.C. and the applicant, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**August 1, 2013.**

## Programmatic Analysis

### Program Description

Transfer membership interest to two new members.

### Character and Competence

The new proposed members of the LLC are:

#### Proposed

Mary C. Trusilo, MD

Rina D. Bernstein, MD

(practicing as Rina C. Davis, MD)

#### Already Approved

Robert L. Tiso, MD

Eric A. Talarico, MD

Joseph A. Catania, MD

The proposed members are practicing surgeons.

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.

Rina D. Bernstein, MD (practicing as Rina C. Davis, MD) disclosed one pending malpractice case.

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Membership Interest Assignment Agreement

Purchaser: Mary Trusila M.D.

Seller: Robert L.Tiso, M.D., Joseph A. Catania, M.D., Eric Tallarico, M.D.

Purchase Price: \$1,804,650 for 24.25% membership interest.

Purchaser: Rina Bernstein M.D., practicing as Rina Davis, M.D.

Seller: Robert L.Tiso, M.D., Joseph A. Catania, M.D., Eric Tallarico, M.D.

Purchase Price: \$223,256 for 3% membership interest.

### Capability and Feasibility

There are no project costs associated with this application.

The respective purchase price of \$1,804,650 and \$223,256 will be met through an M & T Bank loan at 5% for 3 year term.

BFA Attachment A is the financial statement as of December 31, 2012 for Heritage One Day Surgery, LLC. The facility began operations on March 3, 2012. As shown on attachment A, the entity had a positive working capital position and positive net asset position. The applicant achieved net income of \$5,769,634.

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 of Heritage One Day Surgery, LLC - December 31, 2012  
BFA Attachment B    Personal Net Worth Statement of Proposed Members

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 1st day of August, 2013, 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 a total of 27.25 percent interest of two (2) new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

131085 E

Heritage One Day Surgery



APPROVAL CONTINGENT UPON:

1. Submission of an executed Membership Assignment Agreement that is acceptable to the Department of Health. [BFA]
2. Submission of the applicant's amended operating agreement, acceptable to the Department. [CSL]
3. Submission of an executed agreement between Syracuse Orthopedic Specialists, P.C. and the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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

Barbara DeCogliano  
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 # 122304 E  
**First To Care Home Care, Inc.**

**County:** Kings County  
**Purpose:** Establishment

**Program:** Certified Home Health Agency  
**Submitted:** December 21, 2012

## Executive Summary

### Description

First to Care Home Care, Inc. a not-for-profit corporation that operates a Certified Home Health Agency (CHHA) located at 6323 Seventh Avenue, New York is requesting approval to establish Metropolitan Jewish Health System, Inc. as its sole corporate member. Currently, First to Care Home Care, Inc. is a joint venture between two corporate members, Maimonides Medical Center and M.J.G.C. Corporation (MJGC Corp.). First to Care Home Care, Inc. will continue to serve Kings, New York and Queens Counties from its current location.

First to Care Home Care, Inc., and MJGC Corp. are participating agencies in Metropolitan Jewish Health System, Inc. which is a multi-faceted health system that provides long term, home care and managed care through a number of corporations linked either by: shared management, overlapping boards, corporate membership and/or outright ownership.

DOH Recommendation  
Contingent Approval

### Need Summary

There will be no need review of this project.

### Program Summary

First to Care Home Care, Inc., an existing Article 36 CHHA serving Kings, New York, and Queens Counties, seeks approval to remove both MJGC Corporation and Maimonides Medical Center as its co-member corporations, and instead establish Metropolitan Jewish Health System, Inc., an existing not-for-profit corporation, as its sole member corporation. The principals and affiliates of First to Care Home Care, Inc., and Metropolitan Jewish Health

System, Inc., all possess the appropriate character and competence for approval of this application.

### Financial Summary

Metropolitan Jewish Health System, Inc. will remunerate Maimonides Medical Center \$4,000,000 for its membership, and at the conclusion of the sale M.J.G.C. Corporation will be dissolved. The \$4,000,000 will be provided by Metropolitan Jewish Health System Foundation, a related entity. There are no project costs associated with this proposal.

Budget	Revenues:	\$10,064,619
	Expenses:	<u>\$9,517,790</u>
	Gain:	\$546,829

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 review of this project.

Office of Health Systems Management

**Approval contingent upon:**

1. Submission of an executed membership change agreement acceptable to the Department of Health.  
[BFA]

**Approval conditional upon:**

1. The project must be completed within one year from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date  
**August 1, 2013.**

## Programmatic Analysis

### Program Description

First to Care Home Care, Inc., is a not-for-profit Article 36 certified home health agency (CHHA) approved to serve Kings, New York, and Queens Counties. The current member corporations of First to Care Home Care, Inc., are MJGC Corporation and Maimonides Medical Center. MJGC Corporation is related to the Metropolitan Jewish Health System, Inc., family of providers through common overlapping Board of Directors membership. The current proposal seeks approval for First to Care Home Care, Inc., to remove both MJGC Corporation and Maimonides Medical Center as its co-member corporations, and instead establish Metropolitan Jewish Health System, Inc., an existing not-for-profit corporation, as its sole member corporation. Metropolitan Jewish Health System, Inc. will provide remuneration to Maimonides Medical Center in exchange for its membership, and MJGC Corporation will be dissolved. First to Care Home Care, Inc. will continue to operate from its current practice location office at 6323 Seventh Avenue, Brooklyn, New York 11220, and will continue to provide the same home health services of nursing, home health aide, physical therapy, occupational therapy, speech-language pathology, medical social services, and medical supplies, equipment, and appliances.

In addition to becoming the sole member corporation of the applicant, First to Care Home Care, Inc., Metropolitan Jewish Health System, Inc. is also the member corporation of the following not-for-profit providers:

- Menorah Home and Hospital for the Aged and Infirm, an Article 28 RHCF and ADHCP,
- Shorefront Jewish Geriatric Center, an Article 28 RHCF and ADHCP which also operates as d/b/a MJGC Home Care, an Article 36 CHHA,
- OLOM Home Care, Inc., d/b/a St. Mary's Metropolitan Home Care for Kids, an Article 36 CHHA that also has St. Mary's Healthcare Systems for Children, Inc., as a co-member corporation,
- Metropolitan Jewish Home Care, Inc., an Article 36 CHHA which also operates as d/b/a Metropolitan Jewish Long Term Home Care, an Article 36 LTHHCP, and d/b/a MJHS Hospice and Palliative Care of Greater New York, an Article 40 hospice, and
- Jacob Perlow Hospice Corporation, d/b/a MJHS Hospice and Palliative Care, an Article 40 hospice.

Although Metropolitan Jewish Health System, Inc. is not the member corporation of the additional health care entities listed below, they are all related within the Metropolitan Jewish family of health care providers through common management and overlapping board memberships:

- MJG Nursing Home Company, Inc., d/b/a Metropolitan Jewish Geriatric Center (former RHCF),
- HomeFirst LHCSA, Inc., d/b/a Metropolitan Jewish Licensed Home Care Services Agency (LHCSA),
- ElderPlan, Inc., a Managed Care Organization (MCO), which also operates as d/b/a HomeFirst, a Medicaid Managed Long Term Care Plan (MLTCP),
- SafePath Benefits, Inc. (a for-profit Life, Accidental, and Health Insurance Sales Agency), and
- MJGC Corporation (one of the current corporate members of First to Care Home Care, Inc. CHHA, which will ultimately be dissolved, as explained above).

Additional entities with board memberships related to Metropolitan Jewish board memberships include:

- Metropolitan Jewish Health System Foundation (Fund Raising)
- Menorah Home and Hospital Foundation (Fund Raising)
- Shorefront Towers, Inc. (HUD Housing)
- Bensonhurst Housing for the Elderly (HUD Independent Senior Housing)

- Institute for Applied Gerontology (former Public Health Research corporation – no longer operational)
- PHCG, Inc. (former Durable Medical Equipment provider – no longer operational)
- Sandcastle Child Care Center (former Children’s Day Care Center - no longer operational)
- Brooklyn Cares, d/b/a Boro Park Primary Care Center (former D&TC - no longer operational)
- Caregivers, Inc. (former LHCSA - no longer operational)
- Geriatric Enterprises, Inc., d/b/a Care Partners (former LHCSA - no longer operational)

The Board of Directors of First to Care Home Care, Inc. is identified below:

<p>Ronald B. Milch, NHA, Chairperson Retired President and CEO, Combined Coordinating Council, Inc. (Hospital Risk Management Company) Affiliations: Elder Plan, Inc.; Elder Plan, Inc., d/b/a HomeFirst; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; MJG Nursing Home Company, Inc.; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Institute for Applied Gerontology; Jacob Perlow Hospice Corporation; Menorah Home and Hospital; SafePath Benefits, Inc.; Metropolitan Jewish Health System, Inc.</p>	<p>Steven L. Topal, Esq., CPA, Secretary/Treasurer Partner, Metis Group, LLC (Accounting Firm) Affiliations: OLOM Home Care, Inc.; MJG Nursing Home Company, Inc.; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Caregivers, Inc.; Elder Plan, Inc.; Elder Plan, Inc., d/b/a HomeFirst; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; Menorah Home and Hospital; Menorah Home and Hospital Foundation; MJHS Foundation; MJGC Corporation; Institute for Applied Gerontology; Sandcastle Child Care Center; Metropolitan Jewish Health System, Inc.</p>
<p>Eli S. Feldman, NHA President and CEO, Metropolitan Jewish Health System, Inc. Affiliations: MJG Nursing Home Company, Inc.; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Caregivers, Inc; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; First to Care Home Care, Inc.; Elder Plan, Inc.; Elder Plan, Inc., d/b/a HomeFirst; Geriatric Enterprises, Inc., d/b/a Care Partners; Brooklyn Cares; Menorah Home and Hospital; MJHS Foundation; Menorah Home and Hospital Foundation; Shorefront Towers; MJGC Corporation; PHCG, Inc.; Institute for Applied Gerontology; Bensonhurst Housing for the Elderly; Jacob Perlow Hospice Corporation; OLOM Home Care, Inc.; Metropolitan Jewish Health System, Inc.</p>	<p>Arthur Goshin, MD Retired President and CEO, HealthyWorld Foundation (Charitable Organization) Affiliations: Elder Plan, Inc; Elder Plan, Inc., d/b/a HomeFirst; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; SafePath Benefits, Inc.; Metropolitan Jewish Health System, Inc.</p>
<p>Paul Finkelstein, MD Retired Preceptor Surgery Department, The Brooklyn Hospital Center Affiliations: Caregivers, Inc.; ElderPlan, Inc, d/b/a HomeFirst; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; MJG Nursing Home Company, Inc.; OLOM Home Care, Inc.; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care;</p>	<p>Jacob I. Friedman, Esq. Partner, Proskauer, Rose, LLP (Law Firm) Affiliations: HomeFirst LHCSA, Inc.; MJG Nursing Home Company, Inc.; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; Shorefront Towers; Metropolitan Jewish Health System, Inc.</p>

Menorah Home and Hospital; Metropolitan Jewish Health System, Inc.	
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The Board of Directors of Metropolitan Jewish Health System, Inc. is identified below:

Ronald B. Milch, NHA, Chairperson Disclosed above	Arthur Goshin, MD, Vice Chairperson Disclosed above
David C. Wiener, CPA (NY & NJ), Treasurer Partner, David C. Wiener & Company, a Division of J. H. Cohn, LLP (CPA Firm) Affiliations: MJHS Foundation; Jacob Perlow Hospice Corporation	Burton J. Esrig, Secretary President, Stony Brook Group (Real Estate Acquisition and Development) Affiliations: Jacob Perlow Hospice Corporation; Elder Plan, Inc.; Elder Plan, Inc., d/b/a HomeFirst; MJHS Foundation; SafePath Benefits, Inc.
Isaac Assael, CPA Retired President, Enwood Personnel & Temporary Services (Employment Agency) Affiliations: Shorefront Jewish Geriatric Center; MJGC Home Care; MJG Nursing Home Company, Inc; Menorah Home and Hospital; Caregivers, Inc; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; Elder Plan, Inc.; Elder Plan, Inc., d/b/a HomeFirst; Geriatric Enterprises, Inc., d/b/a Care Partners; MJHS Foundation	Irving Dayan Vice President, Maurice Max, Inc. (Costume Jewelry Manufacturing) Affiliations: Jacob Perlow Hospice Corporation
Traci Entel Partner, Booz and Company (Consulting Firm) Affiliations: ElderPlan, Inc.; ElderPlan, Inc., d/b/a HomeFirst; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York	Eli S. Feldman, NHA Disclosed above
Paul Finkelstein, MD Disclosed above	Jacob I. Friedman, Esq. Disclosed above
Clara Williams Senior Ambassador Retention Specialist, Elder Plan, Inc. Affiliations: Elder Plan, Inc; Elder Plan, Inc., d/b/a HomeFirst	Steven L. Topal, Esq., CPA Disclosed above
Estere M. DuBoulay Owner, Chez Soi (Estate and Asset Management) Affiliations: Jacob Perlow Hospice Corporation; MJHS Foundation	Shmuel Lefkowitz President, Prime Resources Group (Real Estate Consulting), Vice President of Community Services, Agudath Israel of America (Non Profit Organization) Affiliations: OLOM Home Care, Inc.; MJG Nursing Home Company, Inc.; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; HomeFirst LHCSA, Inc.; Metropolitan Jewish Home Care, Inc.; Metropolitan Jewish Long Term Home Care; MJHS Hospice and Palliative Care of Greater New York; Elder Plan, Inc; Elder Plan, Inc., d/b/a HomeFirst; Menorah Home and Hospital; Menorah Home and Hospital Foundation; Shorefront Towers; Institute for Applied Gerontology; Jacob Perlow Hospice Corporation; MJHS Foundation

<p>Maurice H. Kolodin Retired COO, Baron Associates, PC (Law Firm) Affiliations: Menorah Home and Hospital; MJG Nursing Home Company, Inc.; Shorefront Jewish Geriatric Center, Inc.; MJGC Home Care; Shorefront Towers</p>	<p>Diane B. Pollard Retired Client Services Consultant, TIAA-CREF (Insurance and Securities) Affiliations: St. Mary's Center, Inc. (RHCF &amp; ADHCP); Elder Plan, Inc; Elder Plan, Inc., d/b/a HomeFirst</p>
<p>Hilda Rayas Self Employed Consultant Affiliations: Elder Plan, Inc; Elder Plan, Inc., d/b/a HomeFirst</p>	<p>William J. Gormley President, William J. Gormley, LLC (Health Care Consultant) Affiliations: Living Resources (both CHHA and OPWDD residence)</p>
<p>Benjamin Karsch Chief Marketing Officer, CIGNA (Health Insurance Plans)</p>	

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A search of all of the above named board members, employers, and affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Office of the Professions of the NYS Education Department, NYSDOH Office of Professional Medical Conduct, NYSDOH Physician Profile, NYSDOH Division of Residential Services, NYS Unified Court System, and New Jersey Division of Consumer Affairs indicate no issues with the licensure of the health professionals and other licensed professionals associated with this application. In addition, the attorneys have all submitted Certificates of Good Standing. Arthur Goshin, MD, had previously disclosed that he is in fact a medical school graduate and was awarded a Doctor of Medicine degree, but he has never become licensed to practice medicine and has never practiced medicine. He has instead pursued a career in insurance, public health administration, and charities. William Gormley has disclosed a previous ethics law violation in November 2008, in which a civil penalty of \$3500 was paid.

The Division of Residential Services reviewed the compliance history of all affiliated nursing homes for the time period 2003 to 2013, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken in October, 2004, against Shorefront Jewish Geriatric Center, based on findings of a September, 2002, survey. Deficiencies were cited in Quality of Care - Pressure Sores. A \$1000 civil penalty was assessed.

It has been determined that the affiliated nursing homes have all provided a substantially consistent high level of care.

The Division of Home and Community Based Services reviewed the compliance history of the affiliated certified home health agencies, long term home health care programs, licensed home care service agencies, and hospices for the time period 2003 to 2013, or for the time periods specified as the affiliations, whichever applied.

An enforcement action was taken in October, 2007, against Jacob Perlow Hospice Corporation based on the findings of a November, 2006, survey. Deficiencies were cited in Governing Authority; Contracts; Administration; Staff and Services; Personnel; Patient / Family Rights; Plan of Care; and Medical Records Systems / Charts. A \$24,000 civil penalty was assessed

An enforcement action was taken in May, 2007, against Metropolitan Jewish Home Care, Inc., based on the findings of a November, 2006, survey. Deficiencies were cited in Patient's Rights; Policies and

Procedures of Service Delivery; Patient Referral, Acceptance, and Discharge; Patient Assessment and Plan of Care; and Governing Authority. A \$10,500 civil penalty was assessed.

An administrative hearing was conducted in 2003 and 2004 with First to Care Home Care, Inc., for Medicaid overpayment identified by NYSDOH during an audit the Department conducted for the period October 27, 1997 through April 30, 1999. In November, 2004, the Administrative Law Judge determined that First to Care Home Care, Inc., received a Medicaid overpayment of \$420,017 which was repaid to the NYSDOH.

It has been determined that the certified home health agencies, long term home health care programs, licensed home care service agencies, and hospice have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients to prevent the recurrence of any code violations. When code violations did occur, it was determined that the operators investigated the circumstances surrounding the violation, and took steps appropriate to the gravity of the violation that a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violation.

The Office of Health Insurance Programs Division of Managed Care reviewed the compliance history of the affiliated managed long term care plan and managed care organization for the time period 2003 to 2013, or for the time periods specified as the affiliations, whichever applied.

An administrative hearing was conducted in 2003 with Elder Plan for Medicaid overpayment identified by NYSDOH during an audit the Department conducted in February, 2001. In April, 2004, the Administrative Law Judge determined that Elder Plan received a Medicaid overpayment of \$1,000,000 which was repaid to the NYSDOH.

It has been determined that the affiliated managed long term care plan and managed care organization have operated in substantial compliance with all applicable codes, rules and regulations.

The NYS Office of Persons with Developmental Disabilities reviewed the compliance history of the affiliated OPWDD community residence for the time period specified as the affiliation. It has been determined that the affiliated community residence has operated in substantial compliance with all applicable codes, rules and regulations.

A review of the personal qualifying information indicates there is nothing in the background of the board members to adversely effect their positions on the boards. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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



## Financial Analysis

### Total Project Cost and Financing

There are no project costs associated with this application.

### Membership Change Agreement

The applicant has submitted a draft membership change agreement, the terms of which are summarized below:

Date:	August 1, 2012
Corporate Members Leaving the Joint Venture	Maimonides Medical Center and M.J.G.C. Corporation
New Sole Corporate Member :	Metropolitan Jewish Health System, Inc.
Consideration:	\$4,000,000
Payment	\$ 400,000 in escrow \$3,600,000 at closing

The \$4,000,000 in consideration will be provided by Metropolitan Jewish Health System Foundation, which is related to the Metropolitan Jewish Health System, Inc. Presented as Attachment C is Metropolitan Jewish Health System Foundation's draft December 31, 2012 certified financial statement, which indicates sufficient liquid resources for providing the \$4,000,000.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 36 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently there are no Medicaid liabilities

### Operating Budget

The applicant has submitted the first and third year's operating budgets, in 2013 dollars, as summarized below:

Description	<u>First Year</u>	<u>Third Year</u>
Medicaid	\$5,770,000	\$5,770,000
Medicare	3,306,000	3,306,000
Commercial	<u>988,619</u>	<u>988,619</u>
Total Revenues	\$10,064,619	\$10,064,619
Total Expenses	<u>\$9,517,790</u>	<u>\$9,517,790</u>
Net Income or (Loss)	\$546,829	\$546,829

Utilization by payer source for the first & third years is anticipated as follows:

	<u>First Year</u>	<u>Third Year</u>
Medicaid – Manage Care	47%	47%

Medicare-Episodic	41%	41%
Commercial – Manage Care	10%	10%
Charity Care	2%	2%

Utilization was based on February 2013 actuals and then adjusted for a 50% reduction due to: increased competition, changes in the marketplace and increased focus on servicing the developmentally disabled population. Expenses are based on historical experience adjusted for a reduction in projected volume.

The DISCO Medicaid reimbursement will be episodic in nature and is expected to average approximately \$5,000, which is similar to what First To Care Home Care received in average Medicaid episodic payments from May 2012 to January 2013.

Medicare average episodic payment of \$2,900 is based on the actual rate received by the applicant. Commercial revenue projections were based on historical payment rates

#### Capability and Feasibility

First To Care Home Care, Inc. joint venture with its two corporate members, Maimonides Medical Center and M.J.G.C. Corporation, will terminate and Metropolitan Jewish Health System, Inc. will become its new sole corporate member. Metropolitan Jewish Health System, Inc. will remunerate Maimonides Medical Center \$4,000,000 for its membership interest in First to Care Home Care, Inc., this remuneration will be provided by a related entity, Metropolitan Jewish Health System Foundation. As mentioned above, it appears they have sufficient liquid resources for this purpose.

First To Care Home Care, Inc. will fund the working capital out of existing resources. As this application is for a change in passive member, additional working capital is not necessary.

The budget projects a first year and third year operating surplus in each year of \$546,829. Revenues are based on current payment methodologies. The submitted budget appears reasonable.

Presented as BFA Attachment A is First To Care Home Care, Inc. December 31, 2012 draft certified financial statement showing for 2012 there was a positive change in net asset position of \$462,757 and for 2011 a negative change in net asset position of \$2,325,161. The facility also achieved a positive change in net income of \$421,417 in 2012 and a net loss of \$2,786,631 in 2011. The applicant states a major factor in 2012's gain was a \$4,096,110 reconciliation payment due to First To Care Home Care, Inc. for operating under the per patient caps from April 2011 to April 2012. For the loss in the 2011, the applicant states there were a number of adverse environmental factors including: implementation of a "Global Cap" and "agency specific cap" on the Medicaid Home Care Fee-for Service reimbursement; increases in operating costs; and reductions in both Medicare Fee-for-Service rates and a reduction in trend factors for those rates. The applicant states management continues to review the existing cost structure and endeavors to reduce operating costs. Additionally they state, one of reasons for this application is to consolidate the governance from two organizations to one, improve efficiencies, and gain economies of scale with other Metropolitan Jewish Health System's CHHA.

Presented as BFA Attachment B is Metropolitan Jewish Health System, Inc. December 31, 2012 draft certified financial statement which shows a positive working capital of \$707,778 in 2012 and a positive Change in Net Assets before Other Changes of \$524,020. When adding in Other Changes for 2012 the positive results of \$524,020 turns into a \$5,070,437 loss, primarily due to a \$6,603,179 loss in disposal of fixed assets, due to a hurricane.

Presented as BFA Attachment C is Metropolitan Jewish Health System Foundation December 31, 2012 draft certified financial statement showing a positive working capital position and a positive \$81,461,605 in net assets as of 2012, which primarily consists of \$80,824,572 in investments.

It appears 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	Draft Certified Financial Summary for 2011 and 2012, First To Care Home Care, Inc.
BFA Attachment B	Draft Certified Financial Summary for 2011 and 2012, Metropolitan Jewish Health System, and Inc.
BFA Attachment C	Draft Certified Financial Summary for 2011 and 2012, Metropolitan Jewish Health System Foundation, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 1st day of August, 2013, 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 Metropolitan Jewish Health System as the sole corporate member of First to Care Home Care, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER

APPLICANT/FACILITY

122304 E

First To Care Home Care Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed membership change agreement acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONED UPON:

1. The project must be completed within one year from the Public Health and Health Planning Council's recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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

Barbara DelCogliano  
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  
Committee Day**

**July 18, 2013**

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**Home Health Agency Licensures**

**Exhibit #14**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
2056-L	3 Angels Care, Inc. (Queens and Nassau Counties)
2047-L	AIM Services, Inc. (Albany, Warren, Schenectady, Washington, Rensselaer, Fulton, Saratoga and Montgomery Counties)
1929-L	Allstar Homecare Agency, Inc. New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)
1967-L	DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley (Orange and Rockland Counties)
2057-L	Entire Care, Inc. (Kings, Westchester, Queens, Bronx, New York, and Richmond Counties)
2170-L	F.A.B., LLC d/b/a F.A.B. Home Care Services (Kings, Richmond, Queens, Bronx, and New York Counties)
1801-L	Hand in Hand Home Care, LLC (Bronx, New York, Queens, Richmond, and Kings Counties)
2101-L	HomeCare Solutions, Inc. (Nassau, Suffolk, and Queens Counties)

- 2005-L Li Bo Lui d/b/a Union Health Care  
(Bronx, Kings, new York, Queens, and Nassau  
Counties)
- 2049-L Maxcare, LLC  
(Bronx, Kings, New York, Queens, and Richmond  
Counties)
- 2085-L New Vision Home Care Services, LLC  
(Westchester County)
- 2054-L Renaissance Health Services, Inc.  
(Kings, Nassau, Queens, Bronx, New York, and  
Richmond Counties)
- 2064-L All American Homecare Agency, Inc.  
(Bronx, Richmond, Kings, Westchester, New York  
and Queens Counties)
- 2253-L Home Aides of Central New York, Inc.  
(Onondaga, Cortland, Oswego, Oneida, Madison  
and Cayuga Counties)
- 2083-L Parkshore Home Health Care, LLC d/b/a  
Renaissance Home Health Care  
(Kings, Bronx, Queens, Richmond, New York and  
Nassau Counties)
- 2181-L Medford Hamlet LLC d/b/a Medford Hamlet Home  
Care  
(Nassau, Suffolk and Queens Counties)

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: AIM Services, Inc.  
Address: Saratoga Springs  
County: Saratoga  
Structure: Not-For-Profit Corporation  
Application Number: 2047-L

Description of Project:

AIM Services, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of AIM Services, Inc. comprises the following individuals:

Martin R. Glastetter – President  
Comptroller, Town of Milton

Jerry Salkowe, MD – Vice President  
Medical Director, Health Now NY, Inc.

Affiliations:

- Director, Whitney M Young Health Center

John (Jack) F. Fleming – Treasurer  
Retired

Michael J. O’Connell – Secretary  
Commercial Loan Manager, Adirondack Trust  
Company

Ross G. Burbank – Director  
Retired

Kathleen Dewey – Director  
Retired

Robert L. Ricketts – Director  
Retired

Julie A. Bonacio – Director  
Owner/Sales, Bonacio Construction

Denise M. Stasik – Director  
Director of Appeals, MVP Health Care

John M. Paolucci – Director  
Retired

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 has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A review of the operations of Whitney M Young Health Center was performed as part of this review for the time period October 2007 – Present.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.



The applicant proposes to serve the residents of the following counties from an office located at 3257 Route 9, Saratoga Springs, New York 12866.

Albany  
Warren

Schenectady  
Washington

Rensselaer  
Fulton

Saratoga  
Montgomery

The applicant proposes to provide the following health care services:

Nursing

Personal Care

Home Health Aide

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: June 17, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Home Aides of Central New York, Inc.  
Address: Syracuse  
County: Onondaga  
Structure: Not-For-Profit Corporation  
Application Number: 2253-L

Description of Project:

Home Aides of Central New York, Inc., a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Home Aides of Central New York, Inc. was previously approved as a home care services agency by the Public Health Council at its June 26, 1987 meeting and subsequently licensed as 6027L001.

The purpose of this proposal is to implement an affiliation with Visiting Nurse Association of Central New York, Inc. a not-for-profit certified home health agency (CHHA) and long term home health care program (LTHHCP) through a common parent corporation, Home Care of Central New York, Inc. The primary purpose of this affiliation is to achieve a multi-agency arrangement that will enhance the organizational efficiency and facilitate the rapid implementation of the newly approved managed long term care plan (MLTCP), VNA Homecare Options, LLC.

The Board of Directors of Home Aides of Central New York, Inc. comprises the following individuals:

Roslyn A. Bilford – Director  
Retired

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2010 – present
- Director, Visiting Nurse Association of Central New York, Inc. (CHHA) 2005 – 2011

David G. Murray, MD – Director  
Retired

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2011 – present
- Director, Independent Health Care Services (LHCSA) 2004 – 2007

John Trop, Esq. – Director  
Attorney, Allstate Insurance

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2011 – present
- CCH Home Care and Palliative Services, Inc. (CHHA) 2004 – 2007

Maureen Cerniglia, NHA – Director  
Administrator of Record, Van Duyn Home and Hospital

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2004 – present

John L. Clark – Director  
President, Pyramid Brokerage Co.

William S. Gerbig – Director  
President, Ralph W. Earl Co.

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2009 – present
- Director, Independent Health Care Services, Inc. (LHCSA) 2003 – 2009

Donald C. Blair, MD – Director  
Physician/Professor, SUNY Upstate Medical University

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2011 – present
- Director, Visiting Nurse Association of Central New York, Inc. (CHHA) 2007 – 2011

Kathleen E. Garafalo, RN, NP – Director  
Employee Health Manager/Welch Allyn

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2011 – present
- Director, Visiting Nurse Association of Central New York, Inc. (CHHA) 2002 – 2008

Anthony P. Marshall, CPA, Esq. – Director  
Partner, Harris Beach PLLC

David A. Johnson – Director  
Partner/Owner, King and King Architects

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2009 – present

Thaddeus (Theodore) J. Lewkowicz, Esq. – Director  
Member/Attorney, Bond, Schoeneck & King, PLLC

Affiliations:

- Director, Visiting Nurse Association of Central New York, Inc. (CHHA) 2007 – present

Karin Sloan DeLaney, Esq. – Director  
Attorney – Contract Partner, Hancock Estabrook LLP

James D. Taylor III – Director  
President, JDTaylor Construction

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2012 – present
- Director, Independent Health Care Services (LHCSA) 2009 – 2012

Thomas H. Dennison, NHA – Director  
Professor, Syracuse University

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2007 – present
- Board Member, St. Elizabeth's Medical Center (Hospital) 2011 - present

Mark J. Murphy, CPA, NHA – Director  
CEO, Syracuse Home Association

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2010 – present
- Director, Visiting Nurse Association of Central New York, Inc. (CHHA) 2004 – 2007

Paul L. Shubmehl, CPA – Director  
Retired

Thomas P. Quinn – Director  
Special Assistant to Senior Vice President for Hospital  
Affairs, SUNY Upstate Medical University

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2012 – present
- Treasurer, CCH Home Care and Palliative Services, Inc. (CHHA) 2012 – present
- Treasurer, Independent Health Care Services, Inc. (LHCSA) 2012 – present
- President, CEO, Board Member, Community General Hospital of Greater Syracuse (Hospital) 2002 – present
- Board Member, EPC, LLC (Ambulatory) 2004 – 2011
- Treasurer, Visiting Nurse Association of Central NY, Inc. (LHCSA) 2012 – present

Pamela S. Horst, MD – Director  
Residency Faculty St. Joseph's Hospital Health Center, Health Research Foundation  
Residency Faculty, Attending Doctor, Palliative Care Consultant, St. Joseph's Hospital Health Center

Marion Hancock-Fish, Esq. – Director  
Law Practice, Hancock Estabrook, LLP

Affiliations:

- Director, VNA Home Care (CHHA, LTHHCP, LHCSA) 2011 – present
- Director, Visiting Nurse Association of Central New York, Inc. (CHHA) 2006 – 2009

Affiliations:

- Director, Home Aides of Central New York, Inc. (LHCSA) 2008 – present

The Board of Directors of Home Care of Central New York, Inc. comprises the following individuals:

Nancy A. Bottar, RN – Director  
Retired

Linda R. Ervin – Director  
County Legislator, Onondaga County

Affiliations:

- Director, Home Aides of Central New York, Inc. (2009-2011)

Affiliations:

- Secretary, Home Aides of Central New York, Inc. (2006-2013)
- Director, Hospice Of Central New York/Hospice & Palliative Care Associates

Roslyn A. Bilford – Director  
(Previously Disclosed)

John Trop, Esq. – Director  
(Previously Disclosed)

David G. Murray, MD – Director  
(Previously Disclosed)

Dell Ford Jordan – Director  
Retired

Affiliations:

- Director, Home Aides of Central New York, Inc. (LHCSA) 2011 – present

Rosaline T. Letiecq – Director  
(Previously Disclosed)

Maureen Cerniglia, NHA – Director  
(Previously Disclosed)

John L. Clark – Director  
(Previously Disclosed)

William S. Gerbig – Director  
(Previously Disclosed)

Thaddeus (Theodore) J. Lewkowicz, Esq. – Director  
(Previously Disclosed)

Donald C. Blair, MD – Director  
(Previously Disclosed)

Karin Sloan DeLaney, Esq. – Director  
(Previously Disclosed)

Amy Tewksbury – Director  
Sr. Vice President of Human Resources, Anaren, Inc.

Kathleen E. Garafalo, RN, NP – Director  
(Previously Disclosed)

James D. Taylor III – Director  
(Previously Disclosed)

Anthony P. Marshall, CPA, Esq. – Director  
(Previously Disclosed)

Thomas H. Dennison, NHA – Director  
(Previously Disclosed)

David A. Johnson – Director  
(Previously Disclosed)

Mark J. Murphy, CPA, NHA – Director  
(Previously Disclosed)

Paul L. Shubmehl, CPA – Director  
(Previously Disclosed)

Pamela S. Horst, MD – Director  
(Previously Disclosed)

Thomas P. Quinn – Director  
(Previously Disclosed)

Marion Hancock-Fish, Esq. – 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.

Thomas H. Dennison, NHA License # 02937 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. He is currently on inactive status.

Mark J. Murphy, NHA License # 04467 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license. He is registered to practice through the end of the current registration period which expires 12/31/2013.

Maureen Cerniglia, NHA License # 04856 holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or her license. She is registered to practice through the end of the current registration period which expires 12/31/2013.

The Office of the Professions of the State Education Department, the New York Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicates no issues with the license of the medical professionals associated with this application.

A Certificate of Good Standing has been received for all attorneys.

The applicant proposes to serve the residents of the following counties from an office located at 723 James Street, Syracuse, New York 13203.

Onondaga  
Cortland

Oswego  
Oneida

Madison

Cayuga

The applicant proposes to provide the following health care services:

Nursing

Personal Care

Home Health Aide

Homemaker

A 10 year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- Visiting Nurse Association of Central New York, Inc. (CHHA, LTHHCP)
- Home Aides of Central New York, Inc. (LHCSA)
- Independent Health Care Services Agency (LHCSA)
- CCH Home Care & Palliative Services, Inc. (CHHA)
- Hospice of Central New York/Hospice & Palliative Care Associates
- Community General Hospital of Greater Syracuse (Hospital)
- EPC, LLC (Diagnostic & Treatment Center) 2004 – 2011
- St. Elizabeth's Medical Center (Hospital) 2011 - present

**VNA Central New York, CHHA** was fined eight thousand five hundred dollars (\$8,500.00) pursuant to a stipulation and order dated November 28, 2005 for surveillance findings of April 21, 2005. A civil penalty in the amount of eight thousand five hundred dollars (\$8,500.00) was assessed with the stipulation that four thousand two hundred and fifty dollars (\$4,250.00) be paid within thirty (30) days from the effective date of the Stipulation and Order. The payment of the remaining four thousand two hundred and fifty dollars (\$4,250.00) was suspended provided the Respondent did not violate the terms of the Stipulation and Order, Public Health Law Article 36 and/or applicable provisions of 10 NYCRR within three (3) years after the effective date of the Stipulation and Order. Deficiencies were found under 10 NYCRR 763.11(b) Governing Authority; 763.6(b) Patient Assessment and Plan of Care; 763.6(e) Patient Assessment and Plan of Care; 763.4(c) Policies and Procedures of Service Delivery; and 763.4(h) Policies and Procedures of Service Delivery.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers 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: July 1, 2013

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 1st day of August, 2013, 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>
2056-L	3 Angels Care, Inc. (Queens and Nassau Counties)
2047-L	AIM Services, Inc. (Albany, Warren, Schenectady, Washington, Rensselaer, Fulton, Saratoga and Montgomery Counties)
1929-L	Allstar Homecare Agency, Inc. New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)
1967-L	DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley (Orange and Rockland Counties)

2057-L Entire Care, Inc.  
(Kings, Westchester, Queens, Bronx, New York, and Richmond Counties)

2170-L F.A.B., LLC d/b/a F.A.B. Home Care Services  
(Kings, Richmond, Queens, Bronx, and New York Counties)

1801-L Hand in Hand Home Care, LLC  
(Bronx, New York, Queens, Richmond, and Kings Counties)

2101-L HomeCare Solutions, Inc.  
(Nassau, Suffolk, and Queens Counties)

2005-L Li Bo Lui d/b/a Union Health Care  
(Bronx, Kings, new York, Queens, and Nassau Counties)

2049-L Maxcare, LLC  
(Bronx, Kings, New York, Queens, and Richmond Counties)

2085-L New Vision Home Care Services, LLC  
(Westchester County)

2064-L All American Homecare Agency, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and Queens Counties)

2253-L Home Aides of Central New York, Inc.  
(Onondaga, Cortland, Oswego, Oneida, Madison and Cayuga Counties)

2181-L Medford Hamlet LLC d/b/a Medford Hamlet Home Care  
(Nassau, Suffolk and Queens Counties)



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

**August 1, 2013**

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

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

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

**Upstate Request for Applications - Certified Home Health Agencies –  
Establish/Construct**

**Exhibit #18**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
1.	121273 E	Elant Choice, Inc. (Orange County) Ms. Hines – Abstained at EPRC	Approval



# Public Health and Health Planning Council

Project # 121273 E

**Elant Choice, Inc.**

**County: Orange County**  
**Purpose: Establishment**

**Program: Certified Home Health Agency**  
**Submitted: April 19, 2012**

## Executive Summary

### Description

Elant Choice, Inc., an existing not-for-profit Medicaid Managed Long Term Home Care Program Plan (MLTCP), is submitting a Certificate of Need application to establish a Certified Home Health Agency to serve Orange, Rockland, and Dutchess counties. The Elant Choice MLTCP is currently approved and operating in Orange, Rockland and Dutchess counties.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies, or expand the approved geographic service areas and/or approved population of existing CHHA's. Elant Choice, Inc. submitted an application in response to the competitive RFA issued on January 25, 2012, and was awarded RFA approval. This CON application is in response to the RFA approval.

Effective May 1, 2012, an Episodic Payment System (EPS) reimbursement methodology to reimburse CHHA providers for services provided to Medicaid patients receiving home care services took effect. The EPS is based on a price for 60 day episodes, which will be adjusted by patient acuity and regional wage differences. The EPS was recommended by the Medicaid Redesign Team (MRT proposal #5) and authorized in the 2011-2012 enacted budget. The EPS is designed to address the issue of rapid growth in Medicaid costs per patient by better aligning payments with needed services, and is part of a broad effort to promote the development of care management arrangements for Medicaid recipients.

### DOH Recommendation

Approval

### Program Summary

This proposal seeks to establish a Certified Home Health Agency (CHHA) to serve the counties of Dutchess, Orange and Rockland pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

### Financial Summary

There are no project costs associated with this application.

### Incremental Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenue:	\$1,110,195	\$4,094,101
Expenses:	<u>981,308</u>	<u>3,196,100</u>
Net Revenue:	\$ 128,887	\$ 898,001

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 of this application.

Office of Health Systems Management

**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

**August 1, 2013.**

# Need Analysis

## Background

Elant Choice, Inc. is requesting approval to establish a new Certified Home Health Agency to serve Dutchess, Orange and Rockland 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 applications, including any supplemental information submitted, are being reviewed by the Department and recommendations are being made 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;
- 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.

Elant Choice, Inc. is an approved MLTCP approved to serve Orange, Rockland and Dutchess counties. Through the parent organization, Elant, Inc., which operates an approved LTHHCP, the proposed CHHA has established referral sources and relationships with providers in the proposed service area. The MLTCP has a Disease Prevention Program for congestive heart failure and diabetes and have a record of reducing hospitalization rates for these diseases. The applicant provided details as to how these programs have improved quality of care and reduced unnecessary hospitalizations and will be implemented within the CHHA. The CHHA, like the MLTCP, will focus on performance improvement and described how their existing performance improvement program improves patient outcomes through early detection or prevention of diseases which has also resulted in decreased hospitalization. In addition, the LTHHCP within the corporate structure, currently uses telehealth and has remote patient monitoring for diagnostic and disease management, allowing them to more easily monitor any significant changes to the patient's condition, and where needed make unscheduled visits reducing emergency visits, which will also be implemented by the proposed CHHA.

The applicant provided relevant data and data analysis regarding health status indicators and demographics of the aging population for the counties they propose to serve to demonstrate community need. The applicant demonstrated public need using the criteria of 709.1(a) and provided supporting data. They also provided a great deal of data indicating current and projected populations of each county. The applicant describes how they will meet the health needs of members of underserved groups which have traditionally experienced difficulties in obtaining access to health services. The applicant emphasized the need for care coordination of home health services to manage chronic disease in the home setting and minimize unnecessary ER visits and hospitalizations.

Recommendation

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

**Programmatic Analysis**

Background

Elant Choice, Inc. is a 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 counties of Dutchess, Orange and Rockland. The sole member of Elant Choice, Inc. is Elant, Inc.

The applicant proposes to operate the CHHA from an office located at 31 Cerone Place, Newburgh, New York 12550. The applicant proposes to provide the following health care services:

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

The Board of Directors of Elant Choice, Inc. will be as follows:

<p>Todd A. Whitney, NHA – President/CEO President/CEO, Elant, Inc.</p>	<p>Robert W. Scherreik – Chairman Executive Vice President, McBride Corporate Real Estate</p> <p>Affiliations: Elant, Inc. Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA, LTHHCP, Day Care Center) Glen Arden, Inc. (CCRC) Elant Choice, Inc., MLTCP Elant at Erie Station, Inc. (Adult Home) Elant at Newburgh, Inc. (RHCF)</p>
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	<p>Elant at Brandywine, Inc. (RHCF, Adult Home)  Elant at Fishkill, Inc. (RHCF, LTHHCP)  (2007 – Present)  Elant at Wappingers Falls (RHCF) (2007 – Present)</p>
<p>Joan Gittelsohn – Treasurer  Retired</p> <p>Affiliations:  Elant Choice, Inc. MLTCP (2010 – present)</p>	<p>Fr. Patrick McGuigan – Secretary  Parish Priest, The Archdiocese of NY</p> <p>Affiliations:  Elant Choice, Inc. MLTCP (2010 – present)</p>
<p>Stephen M. Albanese, PT – Trustee  Partner/Owner, Access Physical Therapy &amp;  Wellness</p> <p>Affiliations:  Bon Secours – Hospital (1/1/09 – present)  Bon Secours Charity Health System – Hospital  (1/1/12 – present)  Elant Choice MLTCP</p>	<p>Stephen M. Brown, CPA – Trustee  Owner/CPA, Stephen M. Brown, CPA</p> <p>Affiliations:  Elant, Inc.  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA,  LTHHCP, Day Care Center)  Glen Arden, Inc. (CCRC)  Elant Choice, Inc., MLTCP (2012 – present)  Elant at Erie Station, Inc. (Adult Home) (through 2007)  Elant at Newburgh, Inc. (RHCF)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2005 –  present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2007 –  Present)  Elant at Wappingers Falls (RHCF) (2007 – present)</p>
<p>Jodie L. Yankanin, RN – Trustee  Director of Career and Technical Education and  Adult Practical Nurse Programs, Orange Ulster  BOCES</p> <p>Affiliations:  Elant Choice, Inc., MLTCP (2012 – present)</p>	<p>Julio Cordero – Trustee  Retired</p> <p>Affiliations:  Elant Choice, Inc., MLTCP (2012 – present)</p>
<p>Michael E. Gawronski, OT – Trustee  Dean, Health Professions Division, Orange  County Community College</p> <p>Affiliations:  Elant Choice, Inc., MLTCP (2012 – present)</p>	

The Board of Directors of Elant, Inc. is as follows:

<p>Donna M. Cornell – Chairman  President, Donna Cornell &amp; Co.</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA  LTHHCP, Day Care Center)  Glen Arden, Inc. (CCRC)</p>	<p>Robert Scherreik – Vice Chairman  (Previously Disclosed)</p>
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<p>Elant at Erie Station, Inc. (Adult Home) (through 2007)  Elant at Newburgh, Inc. (RHCF)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2005 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2007 – Present)  Elant at Wappingers Falls (RHCF) (2007 – Present)</p>	
<p>Stephen M. Brown – Treasurer  (Previously Disclosed)</p>	<p>Thomas A. McGorry – Secretary  Commercial Lender/Business Development,  Rhinebeck Bank</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA, LTHHCP, Day Care Center) (2012 – present)  Glen Arden, Inc. (CCRC) (2012 – present)  Elant at Newburgh, Inc. (RHCF) (2012 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2012 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2012 – present)  Elant at Wappingers Falls (RHCF) (2012 – present)</p>
<p>Michael J. DiTullo – Trustee  President/CEO, Rockland Economic Development Corp.</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA LTHHCP, Day Care Center) (2012 – present)  Glen Arden, Inc. (CCRC) (2012 – present)  Elant at Newburgh, Inc. (RHCF) (2012 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2012 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2012 – present)  Elant at Wappingers Falls (RHCF) (2012 – present)</p>	<p>Paul S. Ernenwein, Esq. – Trustee  Attorney, Tarshis-Catania</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA, LTHHCP, Day Care Center) (2011 – present)  Glen Arden, Inc. (CCRC) (2011 – present)  Elant at Newburgh, Inc. (RHCF) (2011 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2011 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2011 – present)  Elant at Wappingers Falls (RHCF) (2011 – present)</p>
<p>Richard B. Golden, Esq. – Trustee  Managing Partner, Burke, Miele &amp; Golden, LLP</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA LTHHCP, Day Care Center) (2006 – present)  Glen Arden, Inc. (CCRC) (2006 – present)  Elant at Newburgh, Inc. (RHCF) (2006 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2006 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2007 – present)  Elant at Wappingers Falls (RHCF) (2007 – present)</p>	<p>Kathleen J. Kazakoff – Trustee  CEO, The Heart Center</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA, LTHHCP, Day Care Center) (2011 – present)  Glen Arden, Inc. (CCRC) (2011 – present)  Elant at Newburgh, Inc. (RHCF) (2011 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2011 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2011 – present)  Elant at Wappingers Falls (RHCF) (2011 – present)</p>

<p>John M. MacEnroe – Trustee</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA LTHHCP, Day Care Center) (2008 – present)  Glen Arden, Inc. (CCRC) (2008 – present)  Elant at Newburgh, Inc. (RHCF) (2008 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2008 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2008 – present)  Elant at Wappingers Falls (RHCF) (2008 – present)</p>	<p>Michelle J. McDonald, RN, NHA – Trustee  National Client Relations Manager, Joint Commission Resources</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA, LTHHCP, Day Care Center) (2012 – present)  Glen Arden, Inc. (CCRC) (2012 – present)  Elant at Newburgh, Inc. (RHCF) (2012 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2012 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2012 – present)  Elant at Wappingers Falls (RHCF) (2012 – present)</p>
<p>Joseph Minuta – Trustee  Member, Minuta Architecture, PLLC</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA LTHHCP, Day Care Center) (2010 – present)  Glen Arden, Inc. (CCRC) (2010 – present)  Elant at Newburgh, Inc. (RHCF) (2010 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2010 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2010 – present)  Elant at Wappingers Falls (RHCF) (2010 – present)</p>	<p>Linda S. Muller – Trustee  President/CEO, The Greater Hudson Valley Family Health Center</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA, LTHHCP, Day Care Center) (2011 – present)  Glen Arden, Inc. (CCRC) (2011 – present)  Elant at Newburgh, Inc. (RHCF) (2011 – present)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2011 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2011 – present)  Elant at Wappingers Falls (RHCF) (2011 – present)</p>
<p>Kunwar G.S. Nagpal, DDS – Trustee  Dentist, Nagpal Dental Associates P.C. Mid-Hudson Dental Implant Center</p> <p>Affiliations:  Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA LTHHCP, Day Care Center)  Glen Arden, Inc. (CCRC)  Elant at Newburgh, Inc. (RHCF)  Elant at Erie Station, Inc. (Adult Home) (through 2007)  Elant at Brandywine, Inc. (RHCF, Adult Home) (2005 – present)  Elant at Fishkill, Inc. (RHCF, LTHHCP) (2007 – present)  Elant at Wappingers Falls (RHCF) (2007 – present)</p>	

A search of the individuals named above revealed no matches on either the NYS OMIG Medicaid Disqualified Provider List, or the US DHHS Office of the Inspector General Exclusion List.



The Office of the Professions of the State Education Department, the New York State Physician Profile and the Office of Professional Medical Conduct, where appropriate, indicate no issues with the licensure of the health professionals associated with this application.

The NYS Unified Court System verifies the active attorney registrations associated with this application.

The Bureau of Professional Credentialing has indicated that Todd A. Whitney NHA license #04083 holds a NHA license in good standing, and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of Professional Credentialing has indicated that Michelle J. McDonald NHA license #04733 holds a NHA license in good standing, and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

A 10 year review of the operations of the following facilities was performed as part of this review (unless a different time period is specified.)

:

- Elant at Goshen, Inc. (RHCF, Adult Home, LHCSA, LTHHCP, Day Care Center)
- Glen Arden, Inc. (CCRC)
- Elant Choice, Inc., MLTCP
- Elant at Erie Station, Inc. (Adult Home)
- Elant at Newburgh, Inc. (RHCF)
- Elant at Brandywine, Inc. (RHCF, Adult Home)
- Elant at Fishkill, Inc. (RHCF, LTHHCP) (2007 – present)
- Elant at Wappingers Falls (RHCF) (2007 – present)
- Bon Secours – Hospital (1/1/09 – present)
- Bon Secours Charity Health System – Hospital (1/1/12 – present)

The Division of Certification and Surveillance has indicated that the hospitals reviewed have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

The Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated the following:

Elant at Brandywine was fined four thousand dollars (\$4,000) pursuant to a stipulation and order dated September 20, 2010 for surveillance findings of September 2, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)&(2) Quality of Care Accidents and 415.26 Organization and Administration.

Elant at Brandywine was fined eight thousand dollars (\$8,000) pursuant to a stipulation and order dated February 26, 2007 for surveillance findings of September 11, 2006. Deficiencies were found under 10 NYCRR 415.4(b) Resident Behavior and Facility Practices: Staff Treatment of Residents, 415.4(b)(3) Resident Behavior and Facility Practices: Staff Treatment of Residents and 415.26 Organization and Administration.

Elant at Fishkill was fined four thousand dollars (\$4,000) pursuant to a stipulation and order dated March 23, 2011 for surveillance findings of January 10, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Definition and 415.26 Quality of Care Accidents Administrative.

Elant at Newburgh was fined seventy-two thousand dollars (\$72,000) pursuant to a stipulation and order dated March 11, 2011 for surveillance findings of September 2, 2009. Deficiencies were found under 10 NYCRR 415.4(b) Mistreatment/Neglect/Appropriation, 415.5(a) Dignity, 415.120(c)(1)(2) Treatment/Services to Prevent/Heal Pressures Sores, 415.12(d) No Catheter, Prevent UTI, Restore Bladder, 415.26 Effective Administration/Resident Well-Being, 415.26(b)(3)(1) Governing Body-Facility

Policies/Appoint Administration, 415.26(c)(1)(iv) Nurse Aide Demonstrate Competency/Care Needs and 415.15(a) Responsibilities of Medical Director.

The information provided by the Bureau of Quality Assurance and Surveillance for Nursing Homes has indicated that the nursing homes reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations. When code violations have occurred, it was determined that the operators investigated the circumstances surrounding the violation and took steps appropriate to the gravity of the violation which a reasonably prudent operator would take to promptly correct and prevent the recurrence of the violations.

The information provided by the Adult Care Facility Policy and Surveillance unit has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the licensed home care services agencies and long term home health care programs have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The Bureau of Managed Long Term Care has indicated the following:

An enforcement action was taken in January, 2008, against Elant Choice based on statements of deficiencies issued in May 2005, and June 2007. Deficiencies were cited in failure to submit both the 2004 and 2006 annual financial statements on time. A \$4,000 civil penalty was assessed.

An enforcement action was taken in April 2009, against Elant Choice based on a statement of deficiencies issued in December 2008. Deficiencies were cited in failure to file September 30, 2008 MLTC Medicaid Managed Care Operating Report (MMCOR) on time. A \$2,000 civil penalty was assessed.

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Office of Children and Family Services Health has indicated that while operational, the applicant provided sufficient supervision to prevent harm to the health, safety and welfare of recipients and to prevent recurrent code violations.

A review of all personal qualifying information indicates there is nothing in the background of the principals listed above to adversely effect their positions in the proposed organizational structure. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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

## Financial Analysis

### Operating Budget

The applicant has submitted an incremental operating budget, in 2012 dollars, during the first and third year, which are summarized below:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	\$ 51,406	\$ 0
Medicaid Managed Care	154,219	757,929
Medicare Fee-for-Service	321,290	1,184,263
Medicare Managed Care	546,193	2,013,248
Commercial Fee-for-Service	9,639	35,528
Commercial Managed Care	9,639	35,528
Private Pay	12,793	48,567
Charity Care	<u>5,015</u>	<u>19,038</u>
Total Revenues	\$1,110,195	\$4,094,101
Expenses	981,308	3,196,100
Net Gain (Loss)	<u>\$128,887</u>	<u>\$898,001</u>

Cases and visits; year 1 are 150 / 7,185, and year three are 542 / 25,961, respectively.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-for-Service	5.0%	0.0%
Medicaid Managed Care	15.0%	20.0%
Medicare Fee-for-Service	25.0%	25.0%
Medicare Managed Care	50.0%	50.0%
Commercial Fee-for-Service	1.0%	1.0%
Commercial Managed Care	1.0%	1.0%
Charity Care	2.0%	2.0%
Private Pay	1.0%	1.0%

Revenues are reflective of current payment rates as well as the implementation of the Medicaid Episodic Payment System. Expense assumptions are based on salaries in the area for CHHA services. Utilization assumptions are based on the applicant's experience.

### Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements are estimated at \$532,683, which appears reasonable based on two months of third year expenses. Presented as BFA Attachment A, is the certified financial statements of Elant Choice, Inc., which indicates the availability of sufficient funds for the equity contribution to meet the working capital requirements.

The submitted incremental budget indicates that the applicant will achieve an excess of revenues over expenses of \$128,887 and \$898,001 during the first and third years, respectively. Revenues are based on current payment rates as well as implementation of the Medicaid Episodic Payment System. The submitted budget appears reasonable.

Presented as BFA Attachment A are the 2010 and 2011 financial statements. As shown on Attachment A, the entity had an average positive working capital position and an average positive net asset position. Also, the applicant had an average operating excess of revenues over expenses of \$312,303 during this period.

BFA Attachment B indicates that the applicant maintained positive working capital and net asset position in 2012. The applicant also achieved net operating income of \$1,204,788, for this period.

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 for Elant Choice, Inc. 2010 and 2011  
BFA Attachment B    Financial Summary for Elant Choice, Inc. 2012 - Unaudited

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 1st day of August, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish a Certified Home Health Agency to serve Orange, Rockland and Dutchess 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

121273 E

Elant Choice, Inc.

APPROVAL CONTINGENT UPON:

N/A

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:

Barbara DelCogliano  
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**

**August 1, 2013**

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

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

**Ambulatory Surgery Centers – 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.	121373 B	Lockport Ambulatory Surgery, LLC (Niagara County) Mr. Booth - Interest Dr. Grant – Abstained at EPRC	Disapproval



# Public Health and Health Planning Council

Project # 121373 B

## Lockport Ambulatory Surgery, LLC

**County:** Niagara County (Lockport)  
**Purpose:** Establishment and Construction

**Program:** Ambulatory Surgery Center  
**Submitted:** May 7, 2012

### Executive Summary

#### Description

Lockport Ambulatory Surgery Center, LLC, a to-be-formed limited liability company requests approval to establish an Article 28 diagnostic and treatment center that will be certified as a multi-specialty freestanding ambulatory surgery center (FASC). The proposed FASC will lease approximately 6,072 square feet of a building located at 160 East Avenue, Lockport, New York 14094. The FASC will have two operating suites, space designate for pre-operating and recovery beds, along with requisite support areas.

Lockport Ambulatory Surgery Center, LLC states that they are committed to seeking certification from one of following; Joint Commission on Accreditation of Healthcare Organization (JCAHO), or Accreditation Association for Ambulatory Health Care (AAAHC).

The proposed members of Lockport Ambulatory Surgery Center, LLC and their ownership interest are as follows:

<u>Proposed Members</u>	<u>Interest</u>
Jeffrey Schratz, M.D.	33.34%
Robert Hodge, M.D.	33.33%
Susan Lougen	33.33%

The applicant states that Great Lakes Surgical Associates, the private medical practice of Jeffrey Schratz, M.D. and Robert Hodge, M.D., is accredited by the Joint Commission on Accreditation for Office Based Surgery.

DOH Recommendation  
Disapproval.

#### Need Summary

The applicant has not demonstrated that the proposed facility would meet the general factors considered in determining public need for health services and medical facilities set forth in 10 NYCRR section 709.1, nor that it would satisfy the specific public need criteria for ambulatory surgery set forth in section 709.5.

Disapproval of the application is recommended.

#### Financial Summary

The applicant has not demonstrated the capability to proceed in a financially feasible manner based upon the Department's sensitized budget:

Disapproval is recommended.



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## Recommendations

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Health Systems Agency  
There will be no HSA review of this project.

Office of Health Systems Management  
**Disapproval.**

Council Action Date  
**August 1, 2013.**

## Need Analysis

Lockport Ambulatory Surgery Center is seeking approval to establish and construct an Article 28 ambulatory surgery center (ASC) to provide multi-specialty ambulatory surgery services in general surgery. The proposed freestanding ambulatory surgery center would be located at 160 East Avenue, Lockport, 14094, in Niagara County.

### Standards

As set forth in section 709.1(a), factors that are to be considered in determining public need for health services and medical facilities include, but are not limited to:

(1) the current and projected population characteristics of the service area, including relevant health status indicators and socio-economic conditions of the population;

(2) normative criteria for age and sex specific utilization rates to correct for unnecessary utilization for health services;

(3) standards for facility and service utilization, comparing actual utilization to capacity, taking into consideration fluctuation of daily census for certain services, the geography of the service area, size of units, and specialized service networks;

(4) the patterns of in and out migration for specific services and patient preference or origin;  
[and]

(5) the need that the population served or to be served has for the services proposed to be offered or expanded....”.

Furthermore, and specifically applicable to ambulatory surgery centers, Section 709.5 provides:

“[f]actors to be considered in determining the public need for ambulatory surgery services and facilities shall include, but not be limited to, the following factors:

(1) written documentation that the proposed capacity of the ambulatory surgery service or facility will be utilized sufficiently to be financially feasible as demonstrated by a three year analysis of projected costs and revenues associated with the program. Written documentation of financial feasibility shall also include, but not be limited to, an analysis of expected demand for ambulatory surgery services and an explanation of how current and expected patient referral and use patterns will make the project financially feasible;

(2) written documentation that the proposed service or facility will enhance access to services by patients, including members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women and handicapped persons) and/or rural populations;

(3) written documentation that the facility's hours of operation and admission policies will promote the availability of services to those in need of such services regardless of their ability to pay. This shall include, but not be limited to, a written policy to provide charity care and to promote access to services regardless of an individual's ability to pay. Charity care shall mean care provided at no charge or reduced charge for the services the facility is certified to provide to patients who are unable to pay full charges, are not eligible for covered benefits under Title XVIII or XIX of the Social Security Act or are not covered by private insurance; and

(4) written documentation of the facility's willingness and ability to safely serve ambulatory surgery patients including, but not limited to, such factors as control of infection, quality assessment and improvement, patient transfer, emergency care, credentialing and medical record keeping as set forth in Part 755 of this Title.

Project Details

The applicants have requested approval to operate a multi-specialty ASC that would perform 941 general surgery procedures in the first full year of operation and 1,500 procedures within three years. The initial volume of 941 procedures reflects the current volume of cases in the applicant physicians' private practice. The remaining 559 would be performed by physicians to be recruited to the community. The applicants state that "the majority" (number and percentage not specified) of the procedures projected for the proposed facility are currently being performed at Eastern Niagara Hospital. The applicants state that the primary service area for the proposed ASC would be the Zip codes 14094, 14028, 14105, 14008, 14012, 14108, 14126, 14103, 14172 and 14105 in the eastern and northern sections of Niagara County.

Deleted: 00

The applicants present no precise information on referral and use patterns to support the 1,500 procedures per year projected for the facility. The application materials instead speculate that the presence of the new ASC would attract new physicians to the service area, which would help bring cases to the facility. However, the applicants do not describe the recruitment efforts or other means by which additional physicians and other providers would be brought to Niagara County. The applicants also expect that the non-institutional setting, convenience and lower costs of service of the proposed ASC would attract patients to the facility. These patients would include an unspecified number of residents who currently leave Niagara County to obtain ambulatory surgery services, and others who would prefer an alternative to the ambulatory surgery services of Eastern Niagara Hospital.

With respect to underserved groups, the applicants state that they would draw patients from the Health Professional Shortage Area (HPSA) that lies within a five- to ten-mile radius of the proposed facility. The application projects that some 13.5 percent of the projected volume and associated revenues of the proposed facility would consist of charity care and services to Medicaid clients.

Service Area

Because the ambulatory surgery need methodology set forth in section 709.5 prescribes no demarcated planning area based on governmental, Health Systems Agency (HSA), economic development zone or other boundaries, consideration of ASC applications is governed by subdivision (c) of Section 709.1, which states that in the absence of other designations, the county shall be the applicable planning area. Although the applicants have proposed a selected number of Niagara County Zip codes as the primary service area for the proposed ASC, their submission must be evaluated with reference to the available services, utilization and public need for ambulatory surgery services in Niagara County as a whole.

Current Services

The following five Niagara County hospitals provide multi-specialty ambulatory surgery services:

- Degraff Memorial Hospital
- Eastern Niagara Hospital-Lockport
- Eastern Niagara Hospital-Newfane
- Mount St. Marys Hospital and Health Center
- Niagara Falls Memorial Medical Center

Utilization of ambulatory surgery patients at these facilities in 2012 was as follows:

	<b><u>Ambulatory Surgery Patients by Facility, 2012</u></b>					
	<u>Patients</u>		<u>% of Facility's Patients</u>		<u>% of All Patients</u>	
	<u>Niagara Co</u>	<u>All (Niagara Co and Others)</u>	<u>From Niagara Co</u>	<u>From Other Counties</u>	<u>Niagara Co and Others</u>	<u>Others</u>
DeGraff Memorial	1,437	4,194	34.3	65.7	100	
Eastern Niagara – Inter Comm	1,099	1,131	97.2	2.8	100	
Eastern Niagara -Lockport	3,585	4,018	89.2	10.8	100	
Mount St Mary's and Health Ctr	7,444	8,026	92.7	7.3	100	
Niagara Falls Memorial Med Ctr	4,966	5,442	91.3	8.7	100	
<b>Total</b>	<b>18,531</b>	<b>22,811</b>	<b>81.2</b>	<b>18.8</b>	<b>100</b>	

There are currently no freestanding ASCs (i.e., ASCs not located on a hospital campus) in Niagara County. However, in August 2011, PHHPC approved Eastern Niagara Hospital's application for the construction of a multi-specialty ASC at the hospital's extension clinic at 5875 South Transit Road, Lockport. This project is scheduled to be completed in the summer of 2014. This hospital-operated ASC will add four operating rooms (ORs) to the current OR capacity in Niagara County.

The Lockport Ambulatory Surgery Center proposed in this application would be located within one mile of Eastern Niagara Hospital's (ENH) Lockport Division and within three miles of the ENH ASC to be located at 5875 South Transit Road. Currently, ENH has a total of six (6) ORs, five (5) Procedure Rooms, and one (1) C-section Room:

<b><u>Eastern Niagara Hospital (ENH) Surgical Capacity</u></b>			
	<b><u>Rooms in Operation</u></b>		
	<b><u>Operating</u></b>	<b><u>Procedure</u></b>	<b><u>OB Unit C-section</u></b>
Eastern Niagara Hospital Lockport Division	4	3	1
Eastern Niagara Hospital Newfane Division	2	2	0
<b>Total</b>	<b>6</b>	<b>5</b>	<b>1</b>
CON 111109-Approved ENH-ASC Extension Clinic	4	0	0
<b>Total Capacity of ENH (upon ENH off-site ASC becoming operational)</b>	<b>10</b>	<b>5</b>	<b>1</b>

Assuming a volume of 1,200 procedures per operating room per year, ENH can perform approximately 7,200 procedures per year in the six ORs currently operating. The hospital will have capacity to perform 12,000 procedures per year when the approved ENH off-site ASC Extension Clinic with four ORs becomes operational.

**Utilization**

ENH inpatient and ambulatory surgery utilization in 2012 was as follows:

<b><u>Surgical Patients</u></b>			
	<b><u>Inpatient</u></b>	<b><u>Ambulatory</u></b>	<b><u>Total</u></b>
ENH Lockport Division	1,140	4,018	5,158
ENH Newfane Division.	458	1,131	1,589
<b>Total</b>	<b>1,598</b>	<b>5,149</b>	<b>6,747</b>
<i>SPARCS 2012</i>			

Treatment of the 6,747 patients served at ENH in 2012 would constitute only 56 percent of what will be ENH's total surgical capacity once the additional four ORs at the hospital's off-site ASC become operational.

A review of ambulatory surgery data for residents of Niagara County shows that a large portion of these patients undergo surgery outside the county. In 2012, a total of 35,868 Niagara County residents used ambulatory surgery services in New York State facilities. Of these 35,868, slightly more than half, i.e., 52 percent (18,531 patients) used facilities in Niagara County. The remaining 48 percent underwent ambulatory surgery elsewhere, principally in facilities in Erie County.

<b><u>Ambulatory Surgery for Niagara County Residents by County of Location, 2012</u></b>		
	<b><u>Niagara Residents</u></b>	<b><u>% of Total</u></b>
Niagara County Facilities	18,531	51.7%
Erie County Facilities	16,713	46.6%
Facilities in Other Counties	624	1.7%
<b>Total Ambulatory Surgery Patients of Niagara County</b>	<b>35,868</b>	<b>100.0%</b>
<i>SPARCS 2012</i>		

As shown above, nearly one-half of Niagara County residents who undergo ambulatory surgery obtain that service in Erie County, despite the presence of five hospitals offering ambulatory surgery in Niagara County. This high percentage in the face of alternatives closer to home likely evinces a strong preference on the part of these patients for the major hospitals and medical centers, freestanding and hospital-operated ASCs, and larger specialty practices of the Erie County health care market.

In addition to significant out-migration by Niagara County residents for ambulatory surgical procedures, recent data shows a modest decline of five percent in Niagara County facilities and of 3.5 percent in Erie County facilities in overall ambulatory surgery service utilization, for all patients, between 2011 and 2012. This decline includes a reduction in ambulatory surgery utilization by residents of Niagara County, whose cases declined by four percent in facilities in Niagara County and by 3.4 percent in facilities in Erie County between 2011 and 2012. Thus, residents of the Erie and Niagara County areas underwent slightly fewer ambulatory surgery procedures in 2012 than in 2011.

<b>Utilization of Ambulatory Surgery Facilities in 2009-12 (SPARCS)</b>				
	<i>All Patients (Niagara and Other Counties)</i>			
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Facilities in Niagara County	25,314	24,567	23,997	22,811
% Difference from Previous Year		-3.0%	-2.3%	-4.9%
Facilities in Erie County	164,195	163,566	164,202	158,498
% Difference from Previous Year		-0.4%	0.4%	-3.5%

<b>Utilization of Ambulatory Surgery Facilities in 2009-12 (SPARCS)</b>				
	<i>Niagara County Residents</i>			
	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Facilities in Niagara County	19,681	19,066	19,305	18,531
% Difference from Previous Year		-3.1%	1.3%	-4.0%
Facilities in Erie County	17,124	17,857	17,298	16,713
% Difference from Previous Year		4.3%	-3.1%	-3.4%

These data and the applicant's projected caseload for the proposed ASC must be considered in the context of projected population growth for Niagara County.

<b>Niagara County: Population Projections</b>					
<u>Age Group</u>	<u>2010</u>	<u>2015</u>	<u>2020</u>	<u>% Change</u> <u>2015-20</u>	<u>% Change</u> <u>2010-20</u>
0-64	179,037	172,021	163,640	-4.9	-8.6
65+	34,658	37,498	41,050	9.5	18.4
TOTAL	213,695	209,519	204,690	-2.3	-4.2

Source: NYSDOH

This information shows an overall decline in Niagara County's population between 2010 and 2020 but significant growth in the population aged 65 years and older. The latter group is a high user of surgical services, but the applicants offer no measurable projections for the type and volume of ambulatory surgery procedures to be used by this cohort in coming years. The Department also notes that even in the midst of a period of projected growth for the 65 and older age group, use of ambulatory surgery services by Niagara County residents as a whole is not increasing; as shown above, it has declined slightly. While this decline may cease and perhaps be reversed as the population over 65 continues to grow, the current lack of growth in surgical procedures, even as this group is becoming a larger share of the Niagara County population, makes it doubtful that use of ambulatory surgery services will increase at a rate that could not be accommodated by the existing surgical capacity of the five hospitals in the county, including the four additional ORs to be opened at the ENH Lockport ASC in 2014. This is especially true if the applicant's proposed ASC drew the majority of its cases, as the applicant states that it would, from cases currently being performed at

ENH's two hospitals. Such a transfer of cases would result in even greater ambulatory surgery capacity at ENH's facilities.

#### Conclusion

The application fails to demonstrate the need for the proposed ASC according to the criteria for expected patient referral and use patterns and comparison of actual service utilization to capacity set forth in sections 709.5 and 709.1. Specifically:

- Section 709.5(d)(1) requires the submission of evidence that a facility will be sufficiently utilized and therefore financially feasible; this evidence should include an analysis of expected demand from ambulatory surgery services and an explanation of how current and expected patient referral and use patterns will make the proposed facility financially feasible. The applicant's expectation of an eventual caseload of 1,500 procedures per year does not address these factors, beyond reference to the 941 procedures currently being performed by the applicant physicians in their private practice. Indeed, the applicants state in their submitted CON schedules that they have no statistical data to support the projected demand for the proposed ASC's services.
- The Department finds the applicant's expected growth in surgical volume for the proposed ASC due to unspecified efforts to recruit new physicians into the facility's service area to be vague, highly speculative and unrelated to current use patterns.
- Section 709.1(a)(4) requires, among other factors considered in making a public need determination, "an analysis of the patterns of in and out migration for specific services and patient preference or origin." The applicants fail to present, in specific, measurable terms, how the proposed ASC would affect the significant use pattern of out-migration by Niagara County residents to Erie County for ambulatory surgery services, whereby 46 percent of Niagara County residents who underwent ambulatory surgery in 2012 did so at facilities in Erie County. In the absence of such a strategy, the Department finds it doubtful that the addition of the proposed ASC in Niagara County would have a significant impact on what for many Niagara County residents likely represents an exercise of consumer choice rather than an indicator of need for more ambulatory surgery services in Niagara County.
- Section 709.1(a)(3) requires, among other factors considered in making a public need determination, a comparison of actual utilization to capacity in the consideration of requests for new facilities and services. As described in the foregoing Analysis section, the significant ambulatory surgery capacity at the five Niagara County hospitals (including the forthcoming ENH Lockport ASC extension site) is likely to prove sufficient to accommodate the need for ambulatory surgery services in Niagara County, based on current use patterns and on population projections through 2020.
- Section 709.1(a)(1) requires, among other factors considered in making a public need determination, a review of "the current and projected population characteristics of the service area, including relevant health status indicators and socio-economic conditions of the population." The population projections for Niagara County evidence a steady decline in population through 2020. And although these projections show significant growth in the county's over-65 population between 2010 and 2020, a current lack of growth in the use of ambulatory surgery procedures by Niagara County residents overall suggests that current ambulatory surgery capacity in the county will be sufficient to meet the needs of this older cohort.

#### Recommendation

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

## Financial Analysis

#### Lease Rental Agreement

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

Date:	March 8, 2013
Premises:	6,072 gross square feet located at 160 East Avenue, Lockport, New York 14094
Landlord:	160 East Avenue, LLC
Lessee:	Lockport Ambulatory Surgery Center, LLC
Term:	5 years at \$109,800 (\$18.08 per sq. ft.) Renewal option of 5-

year terms that renews on a automatic basis unless terminated  
 by either party  
 Triple Net

Provisions:

The applicant states that the lease is a non-arm's length arrangement as the members and ownership interests are identical for the landlord and applicant. Realtor letters have been provided attesting to the rental rate being of fair market value.

The applicant states that the landlord is responsible for renovation to the building located at 160 East Avenue, Lockport, New York. The landlord, 160 East Avenue, LLC, has entered into \$1,600,000 mortgage with M&T Bank for 20 years at a variable interest rate that is currently at 4.13%. Additional, the applicant states a member of the landlord has paid \$120,000 for the land.

Total Project Costs and Financing

Total project cost for the acquisition of moveable equipment is estimated at \$303,650, itemized as follows:

Movable Equipment	\$300,000
CON Application Fee	2,000
CON Processing Fee	<u>1,650</u>
Total Project Cost	\$303,650

Project costs are based on an August 19, 2013 start date with a two month and one week construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$67,760
Loan (5-year term, 4.53%)	<u>235,890</u>
Total	\$303,650

The \$300,000 equipment loan was originally provided to the applicant's private practice, Great Lakes Surgical Associates, P.C. with 5 year terms at an interest rate which is currently at 4.53%. The applicant states the \$235,890 remaining balance will be assumed by the Lockport Ambulatory Center, LLC upon CON approval.

Operating Budget

The applicant has submitted the first and third years operating budgets, in 2013 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$355,626	\$561,515
Expenses:		
Operating	\$151,485	\$353,349
Capital	<u>159,500</u>	<u>156,700</u>
Total Expenses	\$310,985	\$510,049
Net Income or (Loss)	\$44,641	\$51,466
Utilization: (procedures)	941	1,500
Cost Per Procedure	\$330.48	\$340.03

	<u>Sensitized Budget</u>	<u>Sensitized Year Three</u>
Revenues		\$456,821
Expenses:		
Operating		\$337,949
Capital		<u>156,700</u>
Total Expenses		\$494,649
Net Income or (Loss)		(\$37,828)
Utilization: (procedures)		1,220

Cost Per Procedure

\$405.45

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

Medicaid Fee-For-Service	1.0%
Medicaid Managed Care	10.0%
Medicare Fee-For-Service	23.5%
Medicare Manage Care	6.0%
Commercial Fee-For-Service	13.0%
Commercial Manage Care	42.0%
Private Pay & Other	2.0%
Charity	2.5%

Utilization by payor source were developed using the demographics from patients currently receiving care. The applicant also took into consideration that a higher percentage of the Medicare population will have their procedures performed in an acute care setting. The applicant expects for the immediate future the majority of the case will continue to be endoscopies. The projected income and volume does not factor in other surgical procedures performed by the member physicians, such as hernia repair and excisional biopsy, nor do they take into consideration any subspecialty surgical cases.

Expense assumptions were based on the historical data from the operations of Great Lakes Surgical Associates, PC, the medical practice of Jeffrey Schratz and Robert Hodge that is accredited by the Joint Commission on Accreditation for Office Based Surgery.

#### Capability and Feasibility

The total project cost of \$303,650 will be satisfied by an investment of \$67,760 and assuming the balance of an M&T Bank equipment loan in the amount of \$235,890 from the applicant's private, Great Lakes Surgical Associates P.C. at the above stated terms.

Working capital requirements are estimated at \$85,008, which appears reasonable based on two months of third year expenses. Working capital will be provided from the members personal assets. Presented as BFA Attachment A is the member's statement of personal net worth which indicates the ability to meet both the equity and working capital requirements. Presented as BFA Attachment B is Lockport Ambulatory Surgery Center, LLC pro forma balance sheet that shows operations will start off with \$152,768 in positive equity.

Lockport Ambulatory Surgery Center, LLC projects an operating excess of \$44,641 and \$51,466 in the first and third years, respectively. Revenues were developed from prior year's average payment for office based endoscopic procedures. While the applicant was unable to provide care to the Medicare patient population, they state that the reimbursement is comparable to some commercial insurance carriers. Medicaid payments were projected to cover minimum costs.

The Department evaluated the applicant's budget which assumes a 59.4% increase in year three utilization above current year volume performed by the two physicians, presently in other settings. The Department believes the applicant's year three volume expectation is not substantiated and is higher than reasonable. As a result, the Department sensitized the budget by assuming half the applicant's budgeted volume growth, allowing for a year three growth of 29.6% above the two physicians' current year volume. The year three sensitized volume reduction is 280 visits, resulting in revenue reduction of \$104,694. The reduction in (variable) expense is \$15,400 (medical supplies). There are no material fixed expense reductions.

It appears that the applicant has not demonstrated the capability to proceed in a financially feasible manner; and disapproval is recommended.

#### Recommendation

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



## Supplemental

### Lockport Ambulatory Surgery Center CON #121373

#### Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** Niagara Falls Memorial Medical Center  
621 Tenth Street  
Niagara Falls, NY 14302

No response.

**Facility:** Mount St. Mary's Hospital and Health Center  
5300 Military Road  
Lewiston, NY 14092

No response.

**Facility:** Eastern Niagara Hospital  
521 East Avenue  
Lockport, NY 14094

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
32% <sup>1</sup>	5,634	1,730	2,000	Yes

Eastern Niagara Hospital (ENH) opposes the application, stating that the operation of the proposed ASC would result in a loss to ENH of 2,000 cases and \$2.3 million in net patient revenues annually. This loss would force the hospital to curtail its clinic program, 66 percent of whose visits are by Medicaid, uninsured or self-pay clients. This revenue loss would also prompt ENH to curtail or eliminate the following:

- Educational programs and screenings offered at no charge;
- Mammography and other cancer screenings offered at no charge;
- Emergency visits for the uninsured;
- Sexual Assault Nurse Examiner (SANE) program.

ENH states further that approval of the proposed ASC would jeopardize the success of the Hospital's approved off-site ASC, scheduled to open in mid-2014. The hospital also states that a loss of revenues to the proposed ASC would also force ENH to reduce its annual \$3.6 million subsidy to Newfane Rehabilitation and Health Care Center, ENH's affiliated nursing home.

<sup>1</sup> Capacity is at ENH's larger division at Lockport. OR utilization at ENH's smaller Newfane division is 22% .

In 2010, ENH experienced a positive income of \$272,023 on revenue of \$63.4 million. In 2011, the hospital had a gain of \$309,418 on revenue of \$70.4 million. The hospital's current assets in 2010 were \$12.7 million and current liabilities were \$12.3 million, for a working capital ratio of 1.03 to 1.0. In 2011, ENH's current assets were \$13.9 million, and current liabilities \$12.5 million, for a working capital ratio of 1.1 to 1.0. In 2010, ENH incurred bad debt costs of \$1,864,631 and provided charity care of \$311,109, for a combined total of \$2,175,741. Net of indigent care pools/assessments, the final combined total was \$1,786,332. In 2011, ENH incurred bad debt costs of \$1,532,762 and provided charity care of \$235,205, for a combined total of \$1,767,967. Net of indigent care pools/assessments, the final combined total was \$1,520,876.

## Supplemental Information from Applicant

**Need and Source of Cases:** The applicants project that the proposed ASC's caseload will be drawn from Niagara County residents who currently travel to Erie County facilities for ambulatory surgery and from others in the proposed service area who would prefer an alternative to undergoing surgery at ENH and other Niagara County hospitals.

**Staff Recruitment and Retention:** The applicants state that they will actively recruit staff in the communities north of Lockport and in Lockport, as well as in Erie County, where job advertising is routinely viewed by Niagara County residents. The applicants state that they do not intend to recruit long-time staff members from the hospitals in eastern Niagara County. The applicants expect to retain staff through regular Monday through Friday daytime work hours and fair wage and benefit packages. The applicants also expect that the opportunity to work locally, rather than to commute to Erie County, will help to deter turnover.

**Office Based Cases:** The applicants state that they cannot say with certainty how many of the procedures for the proposed ASC are currently performed as office-based surgery.

## OHSM Comment

ENH's prediction of significant financial losses to the proposed ASC is plausible, given that the ASC applicants anticipate that the majority of their cases will be drawn from those currently being performed at ENH. ENH's submitted information showing that the hospital is using only 32 percent of its current OR capacity also gives support to the Department's assessment that there is sufficient OR capacity in Niagara County facilities to meet current and projected need for ambulatory surgery procedures. This is especially true in view of the additional OR capacity that will be available in the County with the opening of ENH's approved off-site ASC in 2014.

The Department concludes that the comments from ENH reinforce the recommendation for disapproval of this application based on public need.

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 1st day of August, 2013, having considered any advice offered by the Regional Health Systems Agency, the Public Health and Health Planning Council, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to disapprove the application referenced below to establish a multi-specialty ambulatory surgery center to be located at 160 East Avenue; and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER

APPLICANT/FACILITY

121373 B

Lockport Ambulatory Surgery, LLC

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

**August 1, 2013**

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

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

**HOME HEALTH AGENCY LICENSURES**

**Exhibit #20**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>	<b><u>E.P.R.C. Recommendation</u></b>
2054-L	Renaissance Health Services, Inc. (Kings, Nassau, Queens, Bronx, New York, and Richmond Counties)	To be presented at the Special Establishment/Project Review Committee on 8/1/13 No Recommendation
2083-L	Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care (Kings, Bronx, Queens, Richmond, New York and Nassau Counties) Mr. Fassler - Interest	To be presented at the Special Establishment/Project Review Committee on 8/1/13 No Recommendation

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Renaissance Health Services, Inc. d/b/a Lagora Health Services  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2054-L

Description of Project:

Renaissance Health Services, Inc. d/b/a Lagora Health Services, 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: Anna Gottdiener owns 100 shares and 100 shares remain unissued.

The Board of Directors of Renaissance Health Services, Inc. comprises the following individual:

Anna Gottdiener, President  
Vice President, Future Care Health Services, Inc.  
Affiliations: Future Care Health Services, Inc.

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 919 Avenue J, Brooklyn, New York 11230:

Kings	Queens	New York
Nassau	Bronx	Richmond

The applicant proposes to open a second office site in Suffolk County to serve the residents of Suffolk County.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Audiology	Medical Social Services	Nutrition
Homemaker	Housekeeper	

A review of the operations of the following agency was performed as part of this review:

Future Care Health 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: July 23, 2013

Division of Home & Community Based Services  
Character and Competence Staff Review

Name of Agency: Parkshore Home Health Care, LLC  
d/b/a Renaissance Home Health Care  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2083-L

Description of Project:

Parkshore Home Health Care, LLC, d/b/a Renaissance Home Health Care, a limited liability company, requests approval for a change in ownership under Article 36 of the Public Health Law.

Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care was previously approved as a licensed home care services agency by the Public Health Council at its March 12, 2004 meeting and subsequently licensed as 1190L001 and 1190L002.

The current membership interests of Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care are as follows: Barry Friedman, 90.00%; Rachel Friedman, 0.10%; Alexander C. Markowits, 9.90%. This proposal seeks to transfer membership interests as follows: Alexander C. Markowits, 99.00% and Parkshore Home Health Holdings, Inc., 1.00%. Alexander C. Markowits is the sole shareholder of Parkshore Home Health Holdings, Inc.

The proposed managing member of Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care is as follows:

Alexander C. Markowits, NHA  
President/CEO Operations, Spring Hills Senior Communities (Edison, NJ)  
Affiliations:  
Spring Hills – Morristown, NJ  
Spring Hills – Somerset, NJ  
Spring Hills – Lake Mary, FL  
Spring Hills – Hunters Creek, FL  
Spring Hills – Middletown, OH  
Spring Hills – Singing Woods, OH  
Spring Hills – Mt. Vernon, VA

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The information provided by the New Jersey Board of Nursing Home Administrators indicates that Alexander C. Markowits holds a Nursing Home Administrator license valid through June 30, 2014.

The applicant proposes to continue to serve the residents of the following counties from an office located at 3044 Coney Island Avenue, Brooklyn, New York 11209:

Kings	Queens	New York
Bronx	Richmond	Nassau

The applicant proposes to continue to serve the residents of Bronx County from an office located at 625 East Fordham Road, Bronx, New York 10458.

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech Language Pathology	Medical Social Services	Nutrition

A review of the following facilities was conducted as part of this review:

Spring Hills – Morristown, NJ  
Spring Hills – Somerset, NJ  
Spring Hills – Lake Mary, FL  
Spring Hills – Hunters Creek, FL  
Spring Hills – Middletown, OH  
Spring Hills – Singing Woods, OH  
Spring Hills – Mt. Vernon, VA

The information provided by the out-of-state regulatory agencies in Florida, New Jersey, Ohio and Virginia regarding the nursing home and assisted living residences reviewed has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations. The New Jersey Department of Health only provided information regarding the preceding twelve months.

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: July 1, 2013

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 1st day of August, 2013, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:

FACILITY:

2054-L

Renaissance Health Services, Inc.  
d/b/a Lagora Health Service  
(Kings, Nassau, Queens, Bronx, New York, and  
Richmond Counties)

2083-L

Parkshore Home Health Care, LLC d/b/a Renaissance  
Home Health Care  
(Kings, Bronx, Queens, Richmond, New York and  
Nassau Counties)