STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

September 12, 2013
10:00 a.m.

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

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Jeffrey Kraut, Chair

A. Adoption of the Ad Hoc Advisory Committee on Environmental and Construction Standard's Final Report and Recommendations **Exhibit #1**

Jeffrey Kraut, Chair

Robert Schmidt, Director, Certificate of Need Review Group
Division of Health Facility Planning

B. Applications for Construction of Health Care Facilities

Continuing Care Retirement Community - Construction **Exhibit # 2**

1.	131304 C	Peconic Landing at Southold (Suffolk County)

Upstate Request For Applications - Certified Home Health Agencies - Construction **Exhibit # 3**

	Number	Applicant/Facility
1.	131186 C	HCR (Clinton County)
2.	131187 C	HCR (Madison County)
3.	131188 C	HCR (Schoharie County)

Upstate Dear Administrator Letters – Long Term Home Health Care Program - Construction **Exhibit # 4**

1. 121267 C TLC Health Network-Lake Shore Hospital (Chautauqua County)

C. Applications for Establishment and Construction of Health Care Facilities/Agencies

Acute Care Services – Establish/Construct **Exhibit # 5**

	Number	Applicant/Facility
1.	132025 E	White Plains Hospital Center (Westchester County)
2.	132026 E	Northern Westchester Hospital (Westchester County)
3.	132027 E	Lawrence Hospital Center (Westchester County)
4.	132028 E	Phelps Memorial Hospital (Westchester County)
5.	132088 E	St. Lawrence Health System, Inc. (St. Lawrence County)

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

	Number	Applicant/Facility
1.	121373 B	Lockport Ambulatory Surgery, LLC (Niagara County)
2.	131030 B	Bay Ridge Surgi-Center, LLC (Kings County)
3.	131308 B	Great South Bay Endoscopy Center, LLC (Suffolk County)

4.	132056 E	Eye Surgery Center of Westchester (Westchester County)
5.	132057 E	Queens Endoscopy ASC, LLC (Allegany County)

Diagnostic and Treatment Centers - Establish/Construct **Exhibit # 7**

	Number	**Applicant/Facility**
1.	062287 E	SDTC – The Center for Discovery Incorporated (Sullivan County)
2.	131237 E	B&L Health, Inc. d/b/a Allhealth D&TC (Kings County)
3.	131258 B	AIDS Healthcare Foundation (Kings County)
4.	131329 E	Planned Parenthood of Central and Western New York, Inc. (Erie County)
5.	131341 E	PALA Community Care, LLC d/b/a PALA Community Care (Kings County)

Dialysis Services- Establish/Construct **Exhibit # 8**

	Number	**Applicant/Facility**
1.	132065 E	Plattsburgh Associates, LLC (Clinton County)

Residential Health Care Facilities - Establish/Construct **Exhibit # 9**

	Number	Applicant/Facility
1.	131107 E	JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center (Erie County)
2.	131120 E	Essex Operations Associates, LLC d/b/a Essex Center for Rehabilitation and Healthcare (Essex County)
3.	131193 E	Washington Operating Associates LLC d/b/a Washington Center for Rehabilitation and Healthcare (Washington County)
4.	131195 E	River Ridge Operating, LLC d/b/a River Ridge Living Center (Montgomery County)
5.	132079 E	Auburn Senior Services, Inc. (Cayuga County)
6.	132093 B	Auburn Senior Services, Inc. (Cayuga County)

Certified Home Health Agencies – Establish/Construct **Exhibit # 10**

	Number	Applicant/Facility
1.	131281 E	L. Woerner, Inc. d/b/a HCR (Washington County)

C. Certificates

Certificate of Incorporation **Exhibit # 11**

Applicant

1. The Hazel Thomas Holder Lung Foundation, Inc.

Certificate of Amendment of the Certificate of Incorporation **Exhibit # 12**

Applicant

1. The Foundation of St. Mary's Hospital at Amsterdam, Inc.

Certificate of Dissolution **Exhibit # 13**

Applicant

1. The Linden Foundation, Inc.

D. Home Health Agency Licensures

Home Health Agency Licensures **Exhibit # 14**

Number	Applicant/Facility
2071-L	Home Life Health Care, LLC d/b/a Alvita Care (Kings, Bronx, Queens, Richmond, New York and Westchester Counties)
2001-L	Effective Home Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
2090-L	Merchant Care Services, Inc. d/b/a BrightStar of White Plains (Bronx and Westchester Counties)
1615-L	Universal Home Care Agency of New York, Inc. (Bronx, Westchester, Kings, New York and Queens Counties)
2242-L	Mount View Assisted Living, Inc. (Niagara County)

II. COMMITTEE ON PUBLIC HEALTH

Dr. Jo Ivey Boufford, Chair

III. COMMITTEE ON HEALTH PLANNING

Dr. John Rugge, Chair

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

September 12, 2013

Adoption of the Ad Hoc Advisory Committee on Environmental and Construction Standard's Final Report and Recommendations **Exhibit #1**

Jeffrey Kraut, Chair

Robert Schmidt, Director, Certificate of Need Review Group
Division of Health Facility Planning

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

Ad Hoc Advisory Committee on Environmental and Construction Standards

Final Report and Recommendations
DRAFT
September 2013

Committee Membership

PHHPC Ad Hoc Advisory Committee on Environmental and Construction Standards

CHAIR –Jeffrey Kraut, PHHPC Member
Senior Vice President of Strategy and Business Informatics
North Shore Long Island Jewish Health System
Associate Dean for Strategic Planning
Hofstra North Shore LIJ School of Medicine

VICE CHAIR – Michael Fassler, PHHPC Member
President and Chief Executive Officer,
CenterLight Health System

Udo Ammon, RA
Dormitory Authority of the State of New York

Howard Berliner, Ph.D., PHHPC Member
Director of Health Policy
Service Employees International Union

Jodumutt Ganesh Bhat, M.D., PHHPC Member
Atlantic Dialysis Management Services
Co-President

Alison Burke, JD
Vice President for Regulatory and Professional Affairs
Greater New York Hospital Association

Andrew Feeney
NYS Department of Health
State Office of Emergency Management

Frederick Heigel
Vice President, Regulatory Affairs, Rural Health and Workforce
Healthcare Association of New York State

Glenn Martin, M.D., PHHPC Member
Associate Dean of Research and Clinical
Assistant Professor of Psychiatry
Mount Sinai School of Medicine

Daniel Nichols, P.E.
Fire Protection Engineer II,
Department of State Division of Code Enforcement and Administration

Michael Primeau
Director
New York State Department of Health
Office of Health Emergency Preparedness

Ann Marie Theresa Sullivan, M.D., PHHPC Member
Elmhurst Hospital Center

Patsy Yang, Ph.D., PHHPC Member
Executive Deputy Commissioner & Chief Operating Officer

NYS Department of Health Committee Staff

Robert Schmidt, MS
Director, Certificate of Need Review Group
Division of Health Facility Planning

Thomas King, Esq.
Legal Counsel to the Committee
NYS Department of Health, Division of Legal Affairs

Colleen Frost
Executive Secretary, Public Health and Health Planning Council

Lisa Thomson
Assistant Executive Secretary, Public Health and Health Planning Council

LIST OF PRESENTERS

OVERVIEW OF UPDATES TO EVACUATION ZONES

- Michael Primeau, Deputy Director,
  NYS DOH, Office of Emergency Preparedness, Office of Public Health

CONSTRUCTION MORATORIUM IN FLOOD ZONES

- Robert Schmidt, Director, Certificate of Need Review Group, NYS DOH Offices of Primary Care and Health Systems Management, Division of Health Facility Planning

MEMORIAL SLOAN KETTERING AMBULATORY CARE CENTER AT E. 74TH STREET

- James Gillson, Administrator, Regulatory Affairs, Memorial Hospital for Cancer and Allied Diseases (MSKCC)
- Gary Acord - MSKCC Facilities Management
- David Geller - MSKCC Facilities Management
- Chris Prochner - Engineering Consultant, Jaros, Baum & Bolles
- Jeff Burke - Project Architect, Perkins Eastman

NYU LANGONE MEDICAL CENTER – Planning for the Future in a Changing Environment"

- Vicki Match Suna, AIA – Vice Dean and Senior Vice President, Real Estate Development and Facilities, NYU Langone Medical Center
- Paul Schwabacher, PE - Senior Vice President, Facilities Management, Real Estate Development and Facilities, NYU Langone Medical Center
- David Tepper, AIA - Associate Partner, Ennead Architects

NYC SPECIAL INITIATIVE FOR REBUILDING AND RESILIENCY HEALTHCARE OBJECTIVES AND PROCESS

- Ophelia Roman, Healthcare Lead, Mayor Bloomberg's Special Initiative for Rebuilding and Resiliency
- Maurice LaBonne, Member on Special Initiative for Rebuilding and Resiliency Committee

STATEWIDE CONSTRUCTION AND BUILDING CODES

- Daniel Nichols, P.E., Fire Protection Engineer,
  Department of State, Division of Code Enforcement and Administration

OUR LADY OF LOURDES HOSPITAL IN BINGHAMTON –
"A Communities Experience with Major Flooding, Turning Adversity into Opportunity"

- Wayne Mitteer, RN,MS
  Vice President of Clinical Services at Our Lady of Lourdes Memorial Hospital
  (Recently retired)

Table of Contents

PHHPC Ad Hoc Environmental and Construction Standards
Final Committee Report

I. Introduction and Charge to the Ad Hoc Committee:

In May 2013 the NYS Department of Health (DOH) announced there would be a statewide moratorium on new construction and major renovation projects for health care facilities located in coastal and flood-prone areas. The primary purposes for imposing the moratorium are to integrate the knowledge and experience gained as a consequence of recent severe weather and flooding events, such as river flooding and flash flooding in Central New York, Hurricanes Irene and Lee and Superstorm Sandy, and make recommendations to amend New York State Health Code.

The Public Health and Health Planning Committee (PHHPC) was directed to establish an Ad-Hoc Committee on Environmental and Construction Standards ("the Committee"). The Committee is charged to examine current building, construction and physical plant health codes appearing in the Compilation of the Rules and Regulations of the State of New York (NYCRR), Title 10 (the "Code") and make recommendations to the PHHPC for revisions to the Code including mitigation and resiliency initiatives as well as dissemination and voluntary adoption of best practices by the healthcare provider industry. The Committee was composed of PHHPC members, experts in code development, enforcement, emergency preparedness and representatives from various sectors of the health care industry.

In meeting its charge the Committee was able to rely on an extensive number of recent studies and reports that not only summarized the impact of severe weather events but also formulated recommendations for code revisions and identified mitigation best practices. Of particular value to the Committee's work was NYC's Hurricane Sandy After Action Report and the activities of the Health Care Special Initiative for Rebuilding and Resiliency (SIRR). The Committee also benefitted from a discussion of state-of-the-art engineering and design challenges currently confronting the construction of two projects proximate to the East River; the $2 billion NYU Langone replacement hospital and Memorial Sloan Kettering's $1 billion Ambulatory Cancer Center. Similarly, the Committee's work was also enhanced by the experiences of Our Lady of Lourdes Hospital of Binghamton. This facility experienced the equivalent of three "500 Year" river floods within a six year period from 2005 to 2011. A 2006 flood resulted in the evacuation and short-term closure of the hospital. In the years which followed, the hospital, with the assistance of FEMA guidance and funding, undertook effective multiple mitigation and resiliency investments which permitted the hospital to maintain operations in 2011 even though flood waters crested at a higher level than they had in the preceding years. (See photo on report cover.)

This report summarizes the observations and deliberations of the Committee which not only resulted in recommendations to revise the current Code for new facilities, but also identified a number

of collateral recommendations with respect to adoption of mitigation and resiliency initiatives into long-term capital planning of existing facilities which would not otherwise be impacted by the proposed code revisions. In addition, the Committee commented upon the importance of emergency preparedness, both institutional and regional.

II. Public Expectations of Access to Critical Health Facilities

New Yorkers statewide have access to a full range of healthcare providers and facility types to obtain needed medical services. During times of crisis, whether a family member experiences an injury or the sudden onset of serious symptoms requiring emergency treatment, New Yorkers expect health care facilities, particularly hospital emergency departments, to remain open and continue to be available to serve the public. Access and capacity are even more critical during mass emergencies when a large number of casualties appear for treatment. Unfortunately, severe weather events have exposed the vulnerability of the State's critical healthcare infrastructure. These events have disrupted operations and in several instances disabled facilities for an extended period of time. Although access to critical services was available because of excess system capacity and a coordinated response between government and healthcare providers, the public cannot depend on that capacity to be available in the future. Without adequate planning and protection of critical operating systems, the adverse effects of these disruptions, at key health care facilities, may have catastrophic personal and public health results.

Therefore, from the perspective of the public, it is of great importance that when operators of critical health facilities undertake multi-million dollar investments in rebuilding or major renovation of their facilities that they be required to incorporate best practices for design and construction of those facilities. This is needed to protect the public's investment and increase the probability that these facilities will remain in operation or promptly resume operations when a community experiences a severe weather event or natural disaster. Operators of existing facilities will benefit by voluntarily implementing consensus recommendations of design/engineering best practices when their physical plant and critical operating infrastructure is being expanded, renovated or upgraded. In the following section of this report, the Committee has outlined several recommendations which include regulatory changes as well as a series of best practice design enhancements.

Over the past two decades, New York State has experienced a significant growth in specialized ambulatory care facilities while the number of hospitals and number of inpatient beds needed by New Yorkers had declined. Much of this growth has been fueled by advances in safety and quality which has increased the number of treatments and procedures which can be successfully provided without an overnight stay in a hospital. The number of free-standing ambulatory surgery centers, diagnostic and treatment centers and imaging centers has grown substantially in recent years, providing New Yorkers with more healthcare access and choice; however, it diminishes the role of traditional hospitals in the process.

There is also recognition that the nature of critical health facilities is changing. A significant portion of access to critical health care services is no longer met in the hospital but through other community-based specialized ambulatory facilities such as dialysis and cancer centers. The public, particularly those with chronic illness, relies on these facilities for timely and critical access to treatment and, therefore, they must also be built at a higher standard to withstand severe natural events and resume operation quickly. In addition, New Yorkers have also seen the rise of large ambulatory care centers providing primary care and specialty physician services serving thousands of patients annually.

More recently the Department of Health approved the operation of off-campus emergency departments, a new critical component of the health care access infrastructure for communities who had historically relied on local hospitals which have now been closed or transformed.

When a chronically ill or symptomatic patient loses access to their physician(s) and care provider(s) an urgent situation can quickly escalate to emergent. Therefore, when ambulatory facilities are affected by disasters and are unavailable for extended periods of time patients converge on the hospital through the emergency department. This further constricts access to the community's front door to health care which is opened and staffed 24 hours, seven days a week.

Thus, one should not consider ambulatory care facilities "non-critical". Recent past experience has demonstrated that when a disaster strikes it affects the fabric of access for an entire community. The critical and non-critical persons seeking care do so in the remaining facilities which are open, which are already under great stress, to respond to public health needs. The ability of those non-critical facilities to return to normal operation quickly is also important to restoring a community's health access equilibrium. The Committee believes that attention must also be paid to those "non-critical" facilities as well.

In addition to the ambulatory care facilities there is great concern about long-term patients who reside or are receiving care in skilled nursing or sub-acute care facilities as well as residents in adult homes. These facilities may not be considered as critical to the overall health of a community as a hospital and its emergency department but, when these "residential facilities" are unable to shelter in place and must evacuate or are closed for extended periods of time, a significant burden is placed on the remaining health care providers. This burden is secondary to the frail, sometimes disoriented, individuals who are least likely to remain medically stable during disruptive events such as an evacuation or relocation into a shelter or another facility.

New York State will most likely continue to experience significant growth in primary care and specialized facilities and free-standing emergency departments. With the passage of the Affordable Care Act, the focus of care will continue to move away from hospitals, as payment methodologies incent greater reliance on managing the health of populations resulting. This is yet another factor that will further decrease hospital utilization.

These trends may bode well for achieving the "Triple Aim" of higher quality, lower cost and increased patient satisfaction, but it also underscores the importance of improving the probability that those fewer hospitals and other critical health care facilities in flood-prone areas can "ride out the storm" and maintain community availability and access to essential services.

The Committee heard from presenters and they discussed the definition of a critical health facility and how that definition is changing. There was clear consensus that all hospitals with 24 hour availability of emergency care and particularly those facilities which are designated trauma care are critical facilities. However, the probability of communities in coastal or river flood zones having access to hospital or emergency care during a natural disaster is also a function of how many other hospitals are nearby, their surge or excess capacity to accommodate a concentrated spike in demand for services and the overall resiliency of each facility.

During Super Storm Sandy, six of NYC's hospitals were closed or evacuated resulting in an 8% loss of the total bed complement in NYC. The reason NYC made it through so well was due to the

sufficient capacity (actual or created) in neighboring hospitals which absorbed an influx of patients, on a temporary short-term basis. The same coordinated effort occurred in Binghamton in 2006 when two other hospitals were able to accommodate acute care patients from Lourdes when it was forced to evacuate.

The Committee raised concern about what if those neighboring facilities did not have surge capacity or if other nearby facilities were also forced to cease operations if a series of highly improbable events all converged and created a devastating reality where the majority of hospitals serving a community suspended operations. These concerns underscored the challenge of the Committee's charge; it is not sufficient to only establish a new standard for newly constructed facilities but there also must be a concerted effort by the health care industry to make phased investments over a period of years to harden the resiliency of existing facilities through the adoption of best mitigation practices on a voluntary basis. The Committee is hopeful that recent experiences and this report encourage the leaders entrusted with the stewardships of the public's health care infrastructure and assets to do so.

III. Defining At-Risk Areas – Definition of Flood Zones and Related Terms

There are several sets of FEMA defined terms that are used throughout this report which are important to understand. The first set of terms is typically encountered during risk assessments and identification of methods to reduce the risk of loss. These terms are defined below :

Mitigation: Mitigation is the effort to reduce loss of life and property by lessening the impact of disasters. Mitigation is taking action now – before the next disaster – to reduce human and financial consequences later (analyzing risk, reducing risk, insuring against risk).

Preparedness: Preparedness is achieved and maintained through a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action. Ongoing preparedness efforts among all those involved in emergency management and incident response activities ensure coordination during times of crises. Moreover, preparedness facilitates efficient and effective emergency management and incident response activities.

Prevention: Prevention encompasses activities designed to provide permanent protection from disasters. This includes engineering and other physical protective measures, as well as legislative and regulatory measures controlling land use, planning, and mandated construction / engineering standards.

Resilience: Resilience is the ability of systems, infrastructure, government, business, communities, and individuals to resist, tolerate, absorb, recover from, prepare for, or adapt to an adverse occurrence that causes harm, destruction, or loss.

Risk: Risk is Hazard & Vulnerability. Risk is the potential impact to people, environment, and economy of a community. Vulnerability is measured by identifying exposure, sensitivity, and ability to cope. Hazard is a natural process with the potential to harm people or property.

The second set of terms relate to the definition of areas which are at-risk of flooding and located in a FEMA defined flood zone. The current regulations around construction in regard to flood zones

were enacted by Executive Order 11988--Floodplain management in 1977. In order to provide detail regarding geography and flood zones, FEMA and the National Flood Insurance Program (NFIP) created maps in 1983 designating zones for varying risk stratifications. These maps, which historically have been hand drawn, are referred to as Flood Insurance Rate Maps or FIRMs. These maps are currently being updated and digitalized due to the recent flooding and storm surge activity.

The following are some terms used in association to FIRMs and to geography as it relates to flood risk:

1. **Flood Zone**

Flood zones are land areas identified by the Federal Emergency Management Agency (FEMA). Each flood zone describes that land area in terms of its risk of flooding. Everyone lives in a flood zone–it's just a question of whether you live in a low, moderate, or high risk area. The Precise definitions of FEMA's flood zone designations appear in Appendix B.

2. **Flood Insurance Rate Map (FIRM)**

A FIRM is a map created by the NFIP for floodplain management and insurance purposes. Digital versions of these maps are called DFIRMs. A FIRM will generally show a community's base flood elevations, flood zones, and floodplain boundaries.

Flood Insurance Rate Map

3. Special Flood Hazard Area (SFHA)

SFHA's refer to the area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year. The 1-percent annual chance flood is also referred to as the base flood or **100-year flood**. SFHAs are labeled as Zone A or Zone V.

4. Evacuation Zone

These zones represent varying threat levels of coastal flooding resulting from storm surge. In New York City, Hurricane contingency plans are based on these zones. Prior to Superstorm Sandy, NYC has a three section evacuation system. Post Sandy, NYC expanded its system into six evacuation zones (1 to 6) for support more precise emergency management procedures. Long Island and Westchester have a three zone system. North of Westchester, FEMA flood zones define risk and are used in evacuations and emergency management planning.

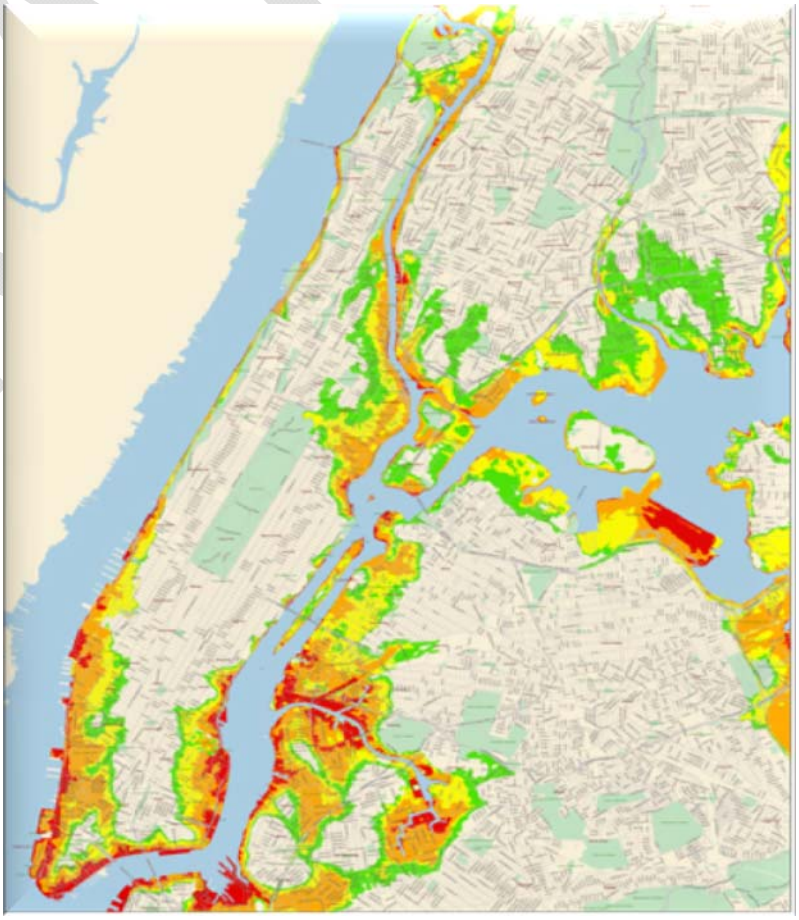
5. Inundation Zone

This term is often synonymous with term "Flood Zone", see definition above

6. SLOSH Zone- (Sea, Lake, and Overland Surges from Hurricanes)

The SLOSH model calculates surge based on storms moving in different directions and with varying strengths. The SLOSH model analyzes storms moving northeast, northwest (the direction that will have the greatest impact), and varying in strength from Category 1 to Category 4.

The SLOSH calculations are based on the storm surge above the mean tide and the strongest potential winds for each category storm. The error is +/- three feet. Additionally, the SLOSH model calculates inundation levels for each location as if the hurricane hit that particular location head-on. The culmination of these factors results in a "worst-case" scenario for storm surge in the SLOSH model.

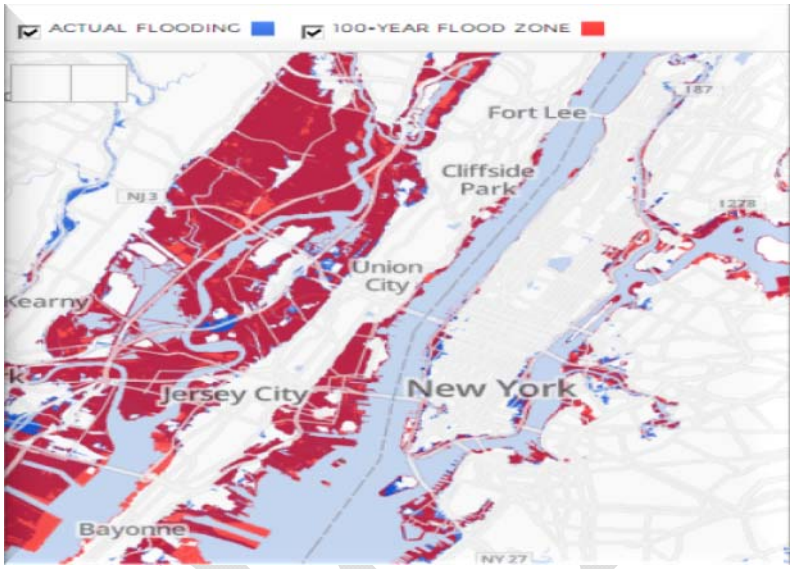


SLOSH Map

7. Base Flood Elevation (BFE)

The peak elevation of the one hundred-year flood, better thought of as the flood that has a one percent or greater chance of occurring in any given year.

It has been the basic standard for floodplain development, used to determine the required elevation of the lowest floor of any new or substantially improved structure



Base Flood Elevation / 100-Year Flood Zone

8. Design Flood Elevation.

The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm).

IV. Health Facilities at Risk

The Department of Health identified hospitals, nursing homes and adult homes in New York City, Long Island and Westchester County which are located in an evacuation zone. In these areas approximately 39% hospital facilities accounting for 36% of inpatient bed capacity (13,000 beds) are at risk. For nursing homes, 38% of facilities representing over 25,000 beds are located in a flood zone, and 37% of adult care facilities beds (8,309 beds) are at risk of flooding. However, 53% of these beds, 5,919 beds, are located in a NYC evacuation zone.

Data for health care facilities at risk in upstate counties was not available in a similar fashion, However, DOH presented FEMA Flood Hazard Areas maps by county indicating which facilities are at risk. A complete listing of facilities and maps can be found in the documents posted on the DOH website of the Ad-hoc Committee;

www.health.ny.gov/facilities/public_and_health_planning_council/environmental_and_construction_committee/

Facilities Located in Evacuation Zones

	Total		Evacuation Zones			
	Facilities	Beds	Facilities	% of Total	Beds	% of Total
Hospitals	**99**	**36,331**	**39**	**39%**	**12,999**	**36%**
NYC	60	25,293	26	43%	9,469	37%
Long Island	23	7,570	13	57%	3,530	47%
Westchester	16	3,468	0	0%	0	0%
Adult Care Facilities	**190**	**22,362**	**71**	**37%**	**8,309**	**37%**
NYC	176	44,696	70	40%	17,689	40%
Long Island	78	16,218	36	46%	6,830	42%
Westchester	42	6,524	5	12%	1,036	16%
Nursing Homes	**296**	**67,438**	**111**	**38%**	**25,555**	**38%**
NYC	76	11,066	42	55%	5,919	53%
Long Island	82	8,261	27	33%	2,223	27%
Westchester	32	3,035	2	6%	167	6%
VA Hospitals	**4**	**1,158**	**3**	**75%**	**847**	**73%**
NYC	3	1,037	2	67%	726	70%
Long Island	1	121	1	100%	121	100%
Westchester	0	0	0	0%	0	0%
Source: NYSDOH						

V. Current NYS Health Code – NYSCRR Title 10

Health care facilities in general and hospitals specifically contain very complex building systems and technology infrastructure to provide a diverse range of coordinated specialized services and activities within strictly controlled environments. Hurricane Katrina and severe weather events in New York and across the country underscore the fact that many of our nation's hospitals were built at a time hospital building code (both Federal and State) did not sufficiently anticipate and protect against hazards or require mitigation against severe weather events.

The Committee learned about the history of building and construction codes from one of its members, David Nichols who serves with the New York Department of State Division of Code

Enforcement and Administration. New York State currently has a Uniform Building Code which most local government jurisdictions have adopted by reference with one notable exception, New York City, which has adopted its own building code. All buildings, including hospitals, built before 1984 under the Uniform Code did not have mandated flood provision requirements.

The current Code, however, speaks to general flood resistant construction, mitigation and resiliency requirements and specifically mandates these measures when a facility is located in a FEMA designated flood hazard zone. These references appear in Section 711.2 and 711.3 of Part 711-General Standards of Construction which describes general requirements for construction of all new health care facilities and can be found in Appendix A. Additional terminology pertaining to flood mitigation is defined within the NYS Uniform Code and can be found in Appendix B.

NYCRR Title 10 Section 711.2-Pertinent Technical Standards, references the need to comply with the requirements of local zoning safety and construction laws most of which have adopted the Uniform Code described above. The Uniform Building Code and Section 711.2 include identical references to other national codes such as those promulgated by the National Fire Protection Association (NFPA), Underwriters Laboratory (UL), Institute of Electrical and Electronics Engineers (IEEE), to name but a few, which specify design, engineering and construction requirements for specialized building infrastructure or systems, see Appendix A for a copy of Section 711.2. Given the multiple layers and levels of guidance available; it is important to note that if the State adopts a higher standard than the standards defined in a national or local guideline, or regulation, then the facility is required to be compliant with, and construct to, the highest standard.

New York State Health Code also recognizes the complexity of hospitals and other health care facilities and has also adopted by reference national standards in Section 711.2; the *Guidelines for Design and Construction of Health Facilities 2010*, published by the Facilities Guidelines Institute of the American Society for Healthcare Engineering with assistance from the U.S. Department of Health and Human Services.

These standards were developed through a national consensus process not only to provide guidance to state and local government but to also set the minimal standards for hospital construction projects qualifying for federal funding (under the Hill-Burton Program) and also those qualifying to receive Medicare reimbursement. A former NYS DOH Director of Facility Planning, Tom Jung, RA, was recognized by FGI for the role he and NYS DOH

2010 FGI - A1.2-6.5.1 Needs Assessment for Disasters

• **Facility assessment**. Owners of existing facilities should undertake an assessment of their facility with respect to its ability to withstand the effects of regional natural disasters. The assessment should consider performance of structural and critical nonstructural building systems and the likelihood of loss of externally supplied power, gas, water, and communications under such conditions.

• **Facility planning**. Facility master planning should consider mitigation measures required to address conditions that may be hazardous to patients and conditions that may compromise the ability of the facility to fulfill its planned post-emergency medical response.

2010 -FGI - A1.2-6.5 Provisions for Disasters

• Design for continued operation. For those facilities that must remain operational in the aftermath of a disaster, special design is required to protect systems and essential building services such as power, water, medical gas systems, and, in certain areas, air conditioning. In addition, special consideration must be given to the likelihood of temporary loss of externally supplied power, gas, water, and communications.

- Flood protection. In accordance with Executive Order 11988:
- Possible flood effects should be considered when selecting and developing the site.
- Insofar as possible, new facilities should not be located on designated floodplains.
- Where locating a facility on a floodplain is unavoidable, consult the Corps of Engineers' regional office for the latest applicable regulations pertaining to required flood insurance and protection measures.
- Hospital helipads should be located a minimum of 3 feet above the 100-year flood elevation on campuses constructed on designated floodplains. A path of travel above 100-year flood elevation should be provided between hospital acute care facilities and the helipad to facilitate evacuation.

played in the most recent national code revisions which were adopted in 2010.

The 2010 Federal construction guidelines now serve as the definitive code for new hospital construction projects in New York State. The full set of the FGI Guidelines have been incorporated into NYCRR by reference. Hospitals constructed prior to 2010 had to comply with the guidelines published in 1996. The relevant section of national guidelines for health care facility construction with respect to construction of facilities in flood plains can be found in Section A1.2-6.5 Provisions for Disaster. (see text box) This section explains the need for facilities to be "designed for continued operations" and references design strategies to withstand natural disasters including earthquakes and floods. The "100 year flood elevation" is referenced as part of this design standard.

There is, however, one specific section of the current Health Code with respect to the construction of health facilities in a flood plain which does not reference the Uniform Code, other national codes or the 2010 FGI Guidelines. This section appears in Part 711 as Section 711.3(e) which addresses the construction of health facilities located in a flood plain. Section 711.3(e) appears in Appendix A in its entirety and an excerpt of the relevant portion is located on this page (see text box) with emphasis added:

The definition of a one hundred year flood plain appears in NYCRR Title 10, Section 128-1.6(a)(72)-Definition-a one hundred year flood plain means the land susceptible to being inundated by a flood that has a one percent or greater chance of recurring in any given year.

Therefore, with respect to construction standards mandated in the New York State Health Code, with respect to facilities proposed to be located in a flood plain, there is only one such reference in Section 711.3(e) which could be modified by the Committee.

Both the national FGI code and the state health code mandate construction standards relating to a proposed health facility being located in a flood plain. For obvious reasons, the Ad Hoc Committee did not attempt to suggest changes to the multitude of national codes referenced in 711.2 which guide new construction or major renovation of

Section 711.3 Site requirements.

(e) If a health facility is located in a **flood plain**, the commissioner **may require** that the health facility comply with any, or all of the following:

1. Health facility footings, foundations, and structural frame shall be designed to be stable under flood conditions.

2. A helicopter landing pad shall be located on the facility roof and shall be structurally sound and suitable for safe helicopter evacuations of patients and staff.

3. The health facility shall be designed and capable of providing services necessary to maintain the life and safety of patients and staff if floodwaters reach the **one-hundred year flood crest level** and shall include the following:
   - i. electrical service, emergency power supply, heating, ventilating and sterilizers,
   - ii. main internal communication capability, including nurses' call systems and the fire alarm system;
   - iii. dietary service;
   - iv. an acceptable alternate to the normal water supply system;
   - v. an acceptable emergency means of storage and/or disposal of sewage, biological waste, and garbage;
   - vi. emergency department service; and,
   - vii. X-ray service.

4. No floor level or basement shall be located **below the 100-year flood crest level**, unless specifically approved by the commissioner. On these floor levels or basements that the commissioner approves to be **below the 100-year flood crest level**:
   - i. all new partitions shall be constructed without void such as solid concrete, solid concrete block, or other solid material;
   - ii. no new carpeting shall be installed; and
   - iii. the following services and equipment shall not be provided or located in such area:
     - a) medical records storage area;
     - b) medical records library;
     - c) surgical suite; and
     - d) such other services and fixed equipment that the commissioner may determine, taking into consideration patient safety and cost of replacement.

5. Storage of available building plans of the existing buildings shall be **above the 100-year flood crest level**.

health care facilities with respect to flood and other natural disasters. If a facility will be located in a flood plain then Section 711.3(e) dictates (and the commissioner has discretion to waive these requirements) the placement of a critical and emergency infrastructure above the "100 year" flood crest level.

The Committee also learned that the mandated requirements of Part 711 did not differentiate among type of health care facilities. There is no differentiation in adherence to the standards between a hospital, nursing home or ambulatory care facility nor is there any distinction among facilities as critical or non-critical. The requirements appear in Section 711.1 Applicability (a) - this part sets forth minimum construction and physical environment standards applicable to all health facilities subject to Public Health Law Article 28, including, but not limited to, general hospitals, nursing homes and ambulatory care facilities. The construction of hospitals (Part 712); nursing homes (Part 713); ambulatory care/diagnostic and treatment centers (Part 715) all cite Part 711 with respect to referenced codes and construction requirements when a facility is proposed to be built in a flood plain.

Thus, there is no differentiation in the health code with respect to construction requirements for critical health facilities and "non-critical" health facilities. If any Article 28 health facility proposes to be located in a flood plain they must meet the same facility standards in relation to the location of the 100 year water crest level.

The Committee realized that its charge revolved around these two key terms, "flood plain" and "100 year flood crest level" and their inter-relationship with the events which subsequently caused the closure of critical health care facilities.

As we explored this definition the following questions were asked:

- What is the likelihood of a future event causing the flood water to rise above the 100 year flood crest level noted in the code.
- What facilities are currently located in a flood plain?
- What is the risk of a future event?
- How is that determination of the flood plain made?
- Given recent statewide and national experience, what should be the new minimum standards for new critical health care facilities located in at-risk areas?

VI. Recommendations from Advisory Study Groups

The Committee benefited from the work of two study groups which reviewed the impact of Super Storm Sandy on healthcare and other facilities and made recommendations for the rebuilding and resiliency of these facilities. One group was the Healthcare Group of New York City Special Initiative for Rebuilding and Resiliency (SIRR) and the other was a collaborative of planning, design and engineering professional groups spearheaded by the American Institute of Architects New York (AIANY). The highlights of their observation and recommendations are discussed below. A complete set of recommendations proposed for the health care sector are included in the appendices of this report.

The Committee heard a presentation from the leadership of the Healthcare SIRR who conducted extensive interviews regarding what happened during Sandy and why, investigated what could happen in the future and made recommendations to address the future risk. A copy of their presentation

appears on the DOH website for the Committee. According to the SIRR, in New York City, during or after the storm, the health care infrastructure was placed under a great amount of stress:

- Six hospitals closed (8% of NYC's bed capacity) and 10+ hospitals used workarounds to remain operational despite outages or some damages. As a consequence of these closures; patients evacuated to other hospitals – many during emergency conditions; elective services and surgeries reduced in many open facilities and city-wide inpatient bed capacity was reduced.

- 26 nursing homes/adult care facilities closed, 5 were partially evacuated and 30 were inundated or experienced power outages but remained open. Patients evacuated to other facilities or special medical needs shelters; many during emergency conditions. The reduction in city-wide capacity restricted the ability of hospitals to transfer patients.
- Approximately 5% of community-based providers (ambulatory care, doctor offices, dialysis, pharmacies, etc.) locations were inundated and about 12% experienced power outages concentrated in certain communities. Some patients delayed care for a few days because they could not see or speak to their providers and had difficulty refilling prescriptions. Patients sought care at ED's or other open providers.

The SIRR Workgroup prepared an excellent table which summarized the critical system failures, primarily power failures of health facilities which resulted in evacuations, closures or reduced services.

Providers	Impact	Building	Equipment (elevators. Imaging)	Utilities (power, water)	Heating/ cooling	Commun-ications/ IT	Staff	Supplies
Hospital EDs	Closures / reduced services	Flooded		Flooded		Back-up failed	Flooded	Carrier-side outages
Hospital in-patient / elective surgeries	Evacuations	Flooded	Flooded	Back-up failed	Flooded	Carrier-side outages	Staff couldn't travel	Limited deliveries
Nursing homes	Evacuations	Flooded	No back-up power			Back-up failed	No back-up	Phone/ internet outages
Adult are facilities	Evacuations	Flooded		No back-up power		No back-up	No back-up	Phone/ internet outages
Community-based providers	Closures / reduced services	Flooded	No back-up power	No back-up	No back-up	Phone/ internet outages	Staff couldn't travel	Limited deliveries
Home-based providers	Reduced services	Disruptions in patients' homes/residences, e.g. loss of power, elevators not working	Carrier-side outages	Staff couldn't travel				Delayed deliveries

Red – Primary Reason for closure, Orange – Secondary, Yellow - Tertiary

The SIRR focused on the criticality of building systems and resources, determined how long a facility can exist /operate without those systems functioning properly, estimated the amount of time needed to repair or restore these systems and identified if there were adequate workarounds to remain in operation. The results of this evaluation were used to address four important planning goals during severe weather events:

- Reduce the risk of emergency evacuations.
- Be able to take on acute emergent patient needs (during and after an event).
- Avoid extended facility outages that strain the system.
- Reduce the number of patients who cannot access their normal provider.

The strategies which form the foundation of SIRR's recommendations to achieve the above goals were to ensure critical operations through system redundancy and the prevention of damage and to reduce barriers to care during and after emergencies. A complete list of SIRR recommendations by building system appear in Appendix E. A summary of those recommendations which have applicability to building code revisions and inform the charge to the Committee appears below:

- Require mitigation to the 500 year flood elevation.
- Require installation of flood resistant emergency generators and fuel supplies, or, pre-connections for external generators.
- Require generators and fuel pumps to be always accessible.
- All emergency generators are to have pre-connections.
- Require pre-connections for temporary boilers and chillers if primary equipment is located below base flood elevation level..
- Require HVAC for inpatient units to be operational during power utility outages by installing extra generator capacity.

The SIRR also commented upon hospital and nursing home retrofit best practices which would focus on a limited set of critical systems that, in the event of failure, would cause emergency evacuation. These include:

- Required elevation and hardening of generators/equipment.
- Protection of fuel tanks and ancillary equipment.
- Require generators and fuel pumps to be always accessible.
- Required pre-connections for external emergency generators.
  The AIANY projected that the worsening impact of human induced climate change combined with natural cycles have resulted in rising sea levels and an increase in the frequency of extreme storm events.

The AIANY also stressed the importance of critical health facilities to be designed to survive without structural failure, be able to withstand the effects of a disaster and remain in operation without evacuation. They recommend that all critical building, existing or planned, should:

- Conduct vulnerability assessments of their buildings in anticipation of the likely effects of extreme climate events.
- Identify technical standards and technologies that will allow their buildings to successfully withstand these events.

- Update plans to keep buildings operational during disasters and to quickly recover functionality afterwards.
- Create implementation plans to put in place remedial actions indicated by the three preceding steps.

The AIANY recommended that NYC should enact a law requiring the conduct of vulnerability assessments of all properties with respect to building code. AIANY recommended:

- An updated building code mandating a more robust disaster resistance capability for all new buildings.
- Hardening and retrofitting of existing buildings deemed vulnerable. This will be expensive, and in some cases impossible. The building code should provide a mechanism for permitting non-compliance; in such cases, an alternative strategy of evacuation should be required. Critical-function buildings in vulnerable locations must have a plan for transfer of service to a protected alternate facility, and these alternate facilities should be required to have the additional capacity and equipment to accommodate such a transfer.

With respect to healthcare facilities, the AIANY used this building type to illustrate the range of changes that can be integrated into code. Their recommendations are similar to those of the SIRR and appear on the following page. Code requirements and best practices for both new and existing facilities are identified.

The AIANY report made a point of the necessity of permitting existing facilities' flexibility in determining the best corrective actions. The adoption of a best practice standard with latitude for equivalent solutions, rather than a proscriptive code requirement, was considered a practical approach to encourage mitigation initiatives for existing facilities. The AIANY Systems Matrix for health Care Facilities has been a useful tool for the committee. Appendix I Includes the Systems Matrix and the Department of health also added relevant building code references and guidance documents to each utility service listed.

VII. Committee Recommendations

The Committee was charged to make recommendations to the PHHPC to revise the Health Code with respect to the construction or major renovations of facilities located in coastal and river flooding areas. The recommendations of the Committee are intended to increase the likelihood that newly constructed critical healthcare facilities or those undergoing major renovation will be able to withstand the effects of severe weather and national disasters. The primary goal is to secure facilities so they may remain in operation to shelter patients in place and reduce the possibility of being evacuated because of the failure of critical operating infrastructure, utilities and equipment. Health care facilities deemed less critical in nature may temporarily close in advance of such events but should be designed to survive without a critical building / equipment system failure so they can re-open quickly.

Suffice it to say that there already exists a significant body of knowledge published in numerous reports and studies which examines building vulnerability to severe weather events and best practices with respect to mitigation and resiliency initiatives. The Committee, in its brief three month existence, was only able to summarize the work of knowledgeable experts and professionals and has little technical contributions to offer.

We were extraordinarily impressed with those experts who shared their knowledge with the Committee. Superstorm Sandy, upstate repetitive river flooding, flash flooding and other recent severe weather events clearly focused attention on the vulnerability of critical health facilities. There has been a growing awareness in the design community for the need to design above the current health code. New facilities located in flood prone areas are being designed so their structures enhance their ability to shelter in place and continue to provide health care to their communities.

The design teams for the $2 billion NYU replacement hospital and Memorial Sloan Kettering's $1 billion ambulatory care building provided the Committee evidence of the new reality. The leaders of these facilities were not waiting for the Committee to conclude its work or for the health code to change. They knew the current code requirement to build at the "100-year flood crest level" is inadequate. They knew the importance of moving their critical operating infrastructure higher up in their buildings and they already understood the need to invest in contemporary mitigation and resiliency measures to protect their substantial investment of capital, especially when those investments are being made adjacent to a river.

Furthermore, facilities such as Lourdes Hospital didn't wait for another 500-year flood before they solicited the support of FEMA to invest in state of the art technology to hold rising river waters at bay. But, alas, NYS can't have a health code which relies on common sense or remains static in the face of a new understanding of the probability of flooding compromising the viability of, and access to, critical health facilities.

RECOMMENDATION #1: REGULATORY CHANGE

Amend NYCRR Title 10, Section 711.3 Site requirements. The three references to the "100-year crest level" should be updated to read "500-year crest level".

On the surface, execution of the Committee's charge appears to be quite simple. The only reference in the Health Code to construction of new facilities in a flood plain appears in 10.NYCRR Part 711.3(e) and makes several references to design and construction of the facility so it is "capable of providing services necessary to maintain life and safety of patients and staff if flood waters reach the 100-year flood crest level." Based on all information and expert presentations reviewed by the Committee it recommends that the Health Code be revised for new construction to a new standard of the 500 year flood crest level.

This regulatory change would impact all new health facilities as well as major renovation projects at existing health facilities. For the purposes of this recommendation, the Committee has decided to use a code defined definition for "major renovation" that can be found in NYS Building Code -- It is referred to as "Substantial Improvement". (See text box).

Substantial Improvement:

For the purpose of determining compliance with the flood provisions of this code, any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure, before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed

New construction and major renovation projects can be planned and designed, quite effectively, using innovative, tested methods that can reduce the risks associated with severe weather events. Presentations made to the Committee by MSKCC and NYU demonstrated how relocation and/or fortification of infrastructure systems will bring a substantial level of security to the facility to ensure continued operation during a severe weather event. We also heard in the case of Our Lady of Lourdes in Binghamton, NY, how mitigation investments exceeded returns after Hurricane Lee hit even harder than the previous storm and subsequent flood in 2006. In 2011, the hospital remained open and fully-functional while their 500 year flood wall still had a one foot freeboard to spare.

Although innovative design, technology, hardening equipment and specific mitigation products are readily available, the true challenge is managing the cost. In the case of both MSKCC and NYU, their mitigation plan will add tens of millions of dollars to the overall project cost. Given the enormous scope of each project, the added costs have been able to be absorbed, but these features are still adding 3% to 5% to each project's total costs. With projects of smaller scope, mitigation activities will no doubt represent a higher percentage of the overall project costs. In the case of Our Lady of Lourdes, the flood of 2006 devastated the facility -- reconstruction and mitigation project costs were manageable because they were primarily covered by private insurance and FEMA. The Committee makes this recommendation with the understanding that some of these measures are costly but exceed the cost with the benefit of providing added safety and continued operation of the facility during times of crisis.

It is important to note that accommodating a "100 year flood crest level" has been required for years. However, in New York State, only two completely new hospitals have been built in the past decade; Orange Regional Medical Center and Corning Hospital, and, neither of which were located in a flood hazard area or coastal flood evacuation zone. In the case of all three facilities examined by the

committee, storm mitigation designs have been based on the "500 year flood crest level" not the "100 year flood crest level" currently required. And that design standard was not required by code but driven by best practice.

To better understand the difference between a 100 year flood and 500 year flood we should refer to them in statistical terms where we measure probability. The 100 year flood has a one percent chance (1%) of happening during a single calendar year. Or in insurance terms, a facility has a 26% chance of flooding during the life of a 30 year mortgage ($1 - (0.99)^{30}$). In contrast, a facility located in a 500 year flood zone carries substantially less risk with a .2% chance of flooding in a single calendar year. This is a 6% chance of occurring at least once during the life of a 30 year mortgage.

The Committee also learned that mitigation measures designed to the 500 year level are not substantially more complicated or burdensome compared to the 100 year level. In the case of MSKCC, their Advisory Base Flood elevation is 11.35 feet. Their Design Flood Elevation (DFE) is 12.35 feet. This is the current code minimum to accommodate a 100 year flood. The DFE for the 500 year flood is only one foot higher at 13.35 feet. Using a combination of fully sealed utility connections, sewer backflow preventors, pumps and sumps, and dry floodproofing in the foundation in combination with locating critical infrastructure on the second floor they exceed even the requirements for the 500 year flood.

Lastly, as noted earlier in this report, this proposed regulatory change has been recommended by Mayor Bloomberg's Special Initiative for Rebuilding and Resiliency (SIRR) Committee and under consideration by NYC as it pertains to NYC building codes. The proposed change has also been vetted by the NYS Department of Health Division of Legal affairs and it poses no conflicts or issues with other local, state or federal law.

RECOMMENDATION #2: ADOPT SPECIFIC MITIGATION MEASURES TO ENHANCE THE RESILIENCE OF HEALTH FACILITIES: Amend Health Code to require additional mitigation and resiliency measures for new facilities located in flood zones.

The Committee recommends that the Health Code be revised to include recommendations of the SIRR and AIANY to include additional mitigation and resiliency requirements into the construction of new facilities. The Health Code should be revised to include and support best practices in design and technology. These include but are not limited to the following:

- **Require installation of flood resistant emergency generators and fuel supplies.**
- **Require generators and fuel pumps to be always accessible.**
- **Require pre-connections in power systems for use in the event of emergency power system failure.**
- **Require pre-connections for temporary boilers and chillers if primary equipment is located below DFE.**
- **Require HVAC for inpatient units to be operational during power utility outages by installing extra generator capacity.**

RECOMMENDATION #3 – CONTINUE TO APPLY THESE REQUIREMENTS TO ALL HEALTH FACILITIES.

The Health Code does not differentiate between new critical and non-critical facilities proposed to be constructed in a flood plain.

The Health Code does not differentiate between critical and non-critical facilities proposed to be constructed in a flood plain nor does the code for new construction differentiate among Article 28 facilities such as hospitals, nursing homes or diagnostic treatment centers. The code references Part 711 which states the standards are applicable to, "…all health facilities subject to Public Law Article 28."

One may consider ambulatory care facilities to be "non-critical;" however, when a disaster strikes it affects the fabric of access for an entire community. The critical and non-critical persons seeking care do so in the remaining facilities which are open and are already under great stress to respond to public health needs. The ability of those non-critical facilities to return to normal operation quickly is important to restoring a community's health access equilibrium. The Committee believes that "non-critical" facilities must be held to the same construction standard. However, the Committee recognizes the Commissioner is given latitude in this regard in order to retain some flexibility and ensure access to care.

Therefore, the Committee sees no reason to create a critical/non-critical facility distinction and any changes to Part 711 as amended by the recommendation of the Committee should continue to apply to all Article 28 health facilities.

Recommendation #4 – Require Accessibility of Patient Information

Encourage use and training on eFind Patient Tracking System

It is important that DOH periodically review the Health Code to reflect the new and emerging technologies regarding the interoperability and sharing of medical information among health providers. Particularly, attention needs to be paid to the vulnerability of IT infrastructure within the walls of the facility and the requirements to make patient information accessible if a facility fails and needs to evacuate and transfer patients to neighboring facilities; or, if a health facility is closed and patients are unable to access their information when they are temporarily diverted to another provider.

The PHHPC was recently made aware of the DOH's development of eFinds which barcodes and registers patients so they can be identified and tracked between an evacuating and receiving facilities. The PHHPC commended DOH on their ability to create this critical functionality just seven months after Sandy. However, this important phase of work will need to add additional applications in future phase so as to attach important information from a patient's medical record in the event of an evacuation.

With the launching of a state-wide network of RHIO's, the public/private State Health Information Network for NY (SHIN-NY) and NYeHC, the ability for providers to access patient information during a crisis is a reality in many areas of the state and this functionality should be fully operational over the next few years. This would permit many more health providers, not just those involved in an evacuation, to access a patient's health information.

The Committee recommends that the Health Code be revised for all Article 28 providers:

- **DOH should adopt uniform regulations, policies and procedures which govern the consent, collection, sharing and access to patient medical information in the event of an evacuation or temporary closure of a health provider.**

- **Amend Part 711, Section 711.3 to enhance the resiliency of the IT infrastructure of Article 28 providers so that a patient's information is accessible through the SHIN-NY, or other data exchange mechanism, in the event of a disaster which results in evacuation or temporary closure of an Article 28 health provider.**

The Committee's charge was limited to new construction and major renovations of existing facilities, however, the Committee believed it important to comment on improving the resiliency of existing facilities.

Recommendation #5 - Voluntary Adoption of Best Practices by Existing Article 28 Providers

Mitigation activities pose a greater challenge for existing facilities. It is much more difficult and costly to retrofit an existing building as comprehensively as a new building can be designed and constructed. More time is required to implement a mitigation plan and must be done in a phased approach in order to maintain current facility operations. As noted above, mitigation examples include protecting electrical equipment, emergency power systems, communication systems, HVAC and domestic water pumps. The primary options for a facility are to either elevate existing equipment or harden equipment in place.

Mayor Bloomberg's Special Initiative for Rebuilding and Resiliency (SIRR) Committee has recommended that facilities complete retrofitting activities by 2030. This is a reasonable amount of time given the fact that most capital programs at hospitals and healthcare systems can extend over a 10 year period and are most likely already underway. By allowing compliance by 2030, this will allow facilities to plan well in advance and prepare financially for the investment. It is the recommendation of the Committee to encourage mitigation and resilience activities.

The Committee heard from presenters and they discussed the definition of a critical health facility and how that definition is changing. There was clear consensus that all hospitals with 24 hour availability of emergency care and particularly those facilities which are designated trauma care are critical facilities. However, the probability of communities in coastal or river flood zones having access to hospital or emergency care during a natural disaster is also a function of how many other hospitals are nearby, their surge or excess capacity to accommodate a concentrated spike in demand for services and the overall resiliency of each facility.

The Committee raised concern about what if those neighboring facilities did not have surge capacity or if other nearby facilities were also forced to cease operations if a series of highly improbable events all converged and created a devastating reality where the majority of hospitals serving a community suspended operations. These concerns underscored the challenge of the Committee's charge; it is not sufficient to only establish a new standard for newly constructed facilities but there also

must be a concerted effort by the health care industry to make phased investments over a period of years to harden the resiliency of existing facilities through the adoption of best mitigation practices on a voluntary basis.

The Committee recommends that each Article 28 provider located in a flood zone be identified and required to:

- **Conduct an assessment of their facilities in anticipation of the effect severe/worse case weather events;**
- **Create a phased plan of investments to increase the probability that their facilities will be successfully operational or quickly recover functionality; and**
- **Present this plan to their Board of Trustees for their consideration as they approve the long term capital plan for their facilities.**
- **Facility and System mitigation plans should be made available to PHHPC for monitoring purposes.**

NYC After Sandy Report has recommended the required retrofitting of existing hospitals in the 500-year flood plain and existing nursing homes and adult care facilities in the 100-year flood plain by 2030. These recommendations will be proposed as part of a subset of amendments to the New York City Construction Standards.

The Committee recognizes that existing buildings require flexibility and access to capital for infrastructure projects is a difficult burden for many providers. It is for this reason the Committee is not mandating implementation of these plans but rather is recommending they be prepared and be presented to the Board of Trustees of the provider. The Committee is advocating for the voluntary adoption of best-practice standard. The primary challenge for existing hospitals, nursing homes and adult care facilities to implement mitigation strategies is the financing of these investments. The Committee encourages, subject to available funding, DOH and other NYS agencies such as Economic Development and the Dormitory Authority to partner with FEMA and the federal government to create mitigation grants or loans which could fund these investments.

The Committee is hopeful that recent experiences and the report of the Committee will encourage the leaders entrusted with the stewardships of the public's health care infrastructure and assets to voluntarily incorporate best practice mitigation and resiliency initiatives into their facility investments.

RECOMMENDATION #6: LIFT THE CURRENT HEALTH FACILITY CONSTRUCTION MORATORIUM

The current moratorium should be lifted in its entirety. It is not recommended to retain a permanent moratorium on any particular region or evacuation zone.

The Committee opened its first session with a review of the revised evacuation zones in NYC and an assessment of facilities at risk in NYC, Long Island and Westchester. As noted earlier, the percentage of health care providers located in evacuation zones is substantial. In NYC, 26 out of 34 hospitals are located in evacuation zones with 37% of the total bed capacity. The ratio is even higher for skilled nursing facilities with 40% of the 176 nursing home located in evacuation zones having 40% of the capacity. When other forms of long term care are included in the assessment, over 17,650 beds are located in evacuation zones.

These statistics led to a frank discussion about the risk to skilled nursing facilities, assisted living and adult homes; analyzing the policies of protecting in place vs. evacuation of residents. Can mitigation and resiliency adequately reduce the risk to this vulnerable population? The following questions were considered; "Should the Committee consider extending the moratorium for construction in Zone 1 (or A)? Is it acceptable to have the frail and elderly population of NYC living in evacuation Zone #1 (or A)?

POST SANDY INITIATIVE
Building Better, Building Smarter: Opportunities for Design and Development
May 2013
AIANY Design for Risk and Reconstruction Committee (DfRR)

Zoning for land-uses should appropriately align with new and updated knowledge of flood zones and other risks, which may mean downzoning in some areas; and revisions to zoning and density limits for other areas that may in the future be required to absorb growth previously destined for flood zones and vulnerable waterfronts

The discussion included thoughts about downzoning or dezoning which is the practice of limiting the uses for land in flood prone zones. In the text box in this section, you can see the recommendation of the AIANY DfRR Committee. They are proposing limited use of land in highly flood prone areas (see recommendations in Appendix F).

It is the position of the committee and was echoed by the public commentary of the day to not consider down-zoning as an option. The Committee felt that if the facility operators were willing to address risks and mitigate, there is no reason to continue to consider restricting land use. There is also a reluctance to promote a statewide position regarding zoning which is a local function.

RECOMMENDATION #7: REGIONAL PLANNING

While physical plant requirements are designed to address risk at the facility level; it is critical regional coordination takes place to ensure an adequate level of "hardened" providers are available in an area to ensure the continuation of services during times of crisis.

Regional planning is currently being conducted though emergency management planning and assessment venues across NYS. The Committee recommends that physical plant standards be a critical component in the process. Local provider coordination needs to take into account risk to key providers and ensure that a critical mass of services will remain available to the general public during future weather events. Hardened providers should be inventoried and assume a primary role in providing services including acute care, dialysis, long term care, home care and pharmacy services.

RECOMMENDATION #8: PHHPC AND NYS DOH ROLES IN PLANNING AND SURVEILLANCE:

The PHHPC and the Department should proactively monitor and identify facilities and projects at risk once the moratorium has been lifted.

The Committee discussed ways to implement their recommendations. The following measures are recommended:

- **CON Application:**

Update Schedule #7 in the CON application. This schedule identifies project elements pertaining to the State Environmental Quality Review Act. Additional information can help to identify whether or not the project is located in a flood or evacuation zone and the measures included which will specifically address mitigation or resiliency.

- **PHHPC Project Exhibits:**

Add a note to project exhibits to identify if the project is in a flood zone and if the project meets the new recommended standard. It was suggested that the "green sheet" contain this information.

- **PHHPC Oversight:**

Conduct an annual review of mitigation and resiliency efforts made by the provider community and report the results to PHHPC.

Appendix A

Effective Date: 12/29/2010
Title: Section 711.2 - Pertinent technical standards

711.2 Pertinent technical standards. All health facilities shall comply with the pertinent provisions of the standards and codes referred to in this section and with local laws relating to zoning, sanitation, fire safety and construction, where such local laws represent standards in addition to those required by this Part. Reference throughout this chapter to codes and standards shall be those editions listed in this section. If a conflict occurs between the following codes and standards or between them and regulations elsewhere in this chapter, then compliance with the more restrictive regulation is required. If federal regulatory requirements conflict with the codes and standards referred to in this section, the department may waive compliance with such standards and codes, provided that a health facility fully complies with said federal regulatory requirements.

(a) The following National Fire Protection Association (NFPA) Codes and Standards are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. These codes and standards are available for public inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. The codes and standards are published by the National Fire Protection Association, and copies are also available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, 1-800-344-3555 or www.nfpa.org. The various codes and standards are available from the NFPA either as individual publications or as contained within the Compilation of NFPA National Fire Codes, 1999 edition.

(1) NFPA 101, Life Safety Code, 2000 edition.

(2) NFPA 101A, Guide on Alternative Approaches to Life Safety, 1998 edition.

(3) NFPA 10, Standard for Portable Fire Extinguishers, 1998 edition.

(4) NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition.

(5) NFPA 14, Standard for the Installation of Standpipe, Private Hydrants and Hose Systems, 2000 edition.

(6) NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 1998 edition.

(7) NFPA 30-1996--Flammable and Combustible Liquids Code.

(8) NFPA 31, Standard for the Installation of Oil-Burning Equipment, 1997 edition.

(9) NFPA 45-1996-Standard on Fire Protection for Laboratories Using Chemicals.

(10) NFPA 54, National Fuel Gas Code, 1999 edition.

(11) NFPA 58, Liquefied Petroleum Gases Code, 1998 edition.

(12) NFPA 70, National Electrical Code, 1999 edition.

(13) NFPA 72, National Fire Alarm Code, 1999 edition.

(14) NFPA 80, Standard for Fire Doors and Fire Windows, 1999 edition.

(15) NFPA 82, Standard on Incinerators and Waste and Linen Handling Systems and Equipment, 1999 edition.

(16) NFPA 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1999 edition.

(17) NFPA 90B, Standard for the Installation of Warm Air Heating and Air-Conditioning Systems, 1999 edition.

(18) NFPA 91, Standards for Exhaust Systems for Air Conveying of Vapors, Gases, Mists and Noncombustible Particulate Solids, 1999 edition.

(19) NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 1998 edition.

(20) NFPA 99, Standard for Health Care Facilities, 1999 edition.

(21) NFPA 110, Standard for Emergency and Standby Power Systems, 1999 edition.

(22) NFPA 111, Standard on Stored Electrical Energy Emergency and Standby Power Systems, 1996 edition.

(23) NFPA 211, Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances, 2000 edition.

(24) NFPA 220, Standard on Types of Building Construction, 1999 edition.

(25) NFPA 221, Standard for Fire Walls and Fire Barrier Walls, 1997 edition.

(26) NFPA 241-1996--Standard for Safeguarding Construction, Alteration, and Demolition Operations.

(27) NFPA 251, Standard Methods of Tests of Fire Endurance of Building Construction and Materials, 1999 edition.

(28) NFPA 252, Standard Methods of Fire Tests of Door Assemblies, 1999 edition.

(29) NFPA 253, Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source, 2000 edition.

(30) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 edition.

(31) NFPA 256, Standard Methods of Fire Tests of Roof Coverings, 1998 edition.

(32) NFPA 257, Standard on Fire Test for Windows and Glass Block Assemblies, 2000 edition.

(33) NFPA 260, Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture, 1998 edition.

(34) NFPA 261, Standard Method of Tests for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes, 1998 edition.

(35) NFPA 265, Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Wall Coverings, 1998 edition.

(36) NFPA 266, Standard Method of Test for Fire Characteristics of Upholstered Furniture Exposed to Flaming Ignition Source, 1998 edition.

(37) NFPA 267, Standard Method of Test for Fire Characteristics of Mattresses and Bedding Assemblies Exposed to Flaming Ignition Source, 1998 edition.

(38) NFPA 286, Standard Methods of Fire Tests for Evaluating Room Fire Contribution of Wall and Ceiling Interior Finish, 2000 edition.

(39) NFPA 418, Standard for Heliports, 1995 edition.

(40) NFPA 701, Standard Methods of Fire Tests for Flame Propagation of Textiles and Films, 1999 edition.

(41) NFPA 703, Standard for Fire Retardant Impregnated Wood and Fire Retardant Coatings for Building Materials, 2000 edition.

(b) The following codes and standards are hereby incorporated by reference, with the same force and effect as if fully set forth at length herein. These codes and standards are available for public inspection and copying at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, NY 12237. Copies are also available from the publisher or issuing organization at the address listed.

(1) ANSI/ASHRAE Standard 52.2-1999, Method of Testing Air-Cleaning Devices for Removal Efficiency by Particle Size, 1999 edition. American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329.

(2) Compressed Gas Association, Inc. (CGA) Pamphlet E-10, Maintenance of Medical Gas and Vacuum Systems in Health Care Facilities, third edition, 2007. Compressed Gas Association, Inc., 4221 Walney Road, Chantilly, VA, 20151-2923, www.cganet.com.

(3) National Council on Radiation Protection and Measurements (NCRP) Report No. 102--Medical X-Ray, Electron Beam and Gamma-Ray Protection for Energies Up to 50MeV (1989). National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Bethesda, MD 20814-3095, www.ncrppublications.org.

(4) National Council on Radiation Protection and Measurements (NCRP) Report No. 147--Structural Shielding Design for Medical X-Ray Imaging Facilities, 2004 edition. National Council on Radiation Protection and Measurements, 7910 Woodmont Avenue, Bethesda, MD 20814-3095, www.ncrppublications.org.

(5) National Council on Radiation Protection and Measurements (NCRP) Report No. 144--Radiation Protection for Particle Accelerator Facilities, 2003 edition. National Council on Radiation Protection and Measurements, 7910

Woodmont Avenue, Bethesda, MD 20814-3095, www.ncrppublications.org.

(6) 1996-97 Guidelines for Design and Construction of Hospital and Health Care Facilities, 1996 edition. The American Institute of Architects Academy of Architecture for Health, with assistance from the U.S. Department of Health and Human Services, the American Institute of Architects Press, 1735 New York Avenue, N.W., Washington, D.C. 20006. The standards set forth in this paragraph are applicable to construction projects completed pursuant to Subparts 712-2 and 713-2 and other applicable provisions in this Chapter. Such projects must, at minimum, maintain compliance with these standards.

(7) Guidelines for Design and Construction of Health Care Facilities, 2010 edition. The American Society for Healthcare Engineering, with assistance from the U.S. Department of Health and Human Services, One North Franklin Street, Chicago, Illinois, 60606, and at www.ashe.org.

(c) Design standards for the disabled. The Americans with Disabilities Act of 1990 (ADA) extends comprehensive civil rights protection to persons with disabilities. Health care facilities must comply with the ADA and the regulations which implement it. Title 28 of the Code of Federal regulations, Public Health Parts 35, Non-Discrimination on the Basis of Disability in State and Local Government Services, and Part 36, Non-Discrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, including Appendix A, "Standard for Accessible Design", 2004 edition. These regulations are published by the Office of the Federal Register National Archives and Records Administration. Copies may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington D.C. 20402.

Appendix B
2010 Existing Building Code of New York State

Definitions from the Building Code of New York State

SUBSTANTIAL IMPROVEMENT. For the purpose of determining compliance with the flood provisions of this code, any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure, before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the code enforcement official and that is the minimum necessary to assure safe living conditions, or

2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

WORK AREA. That portion or portions of a building consisting of all reconfigured spaces as indicated on the construction documents. Work area excludes other portions of the building where incidental work entailed by the intended work must be performed and portions of the building where work not initially intended by the owner is specifically required by this code.

ALTERATION. Any construction or renovation to an existing structure other than a repair or addition. Alterations are classified as Level 1, Level 2, and Level 3

SECTION 401 GENERAL

401.1 Scope. The provisions of this chapter shall be used in conjunction with Chapters 5 through 12 and shall apply to the repair, alteration, addition and change of occupancy of existing structures, including historic and moved structures, as referenced in Section 101.5.2. The work performed on an existing building shall be classified in accordance with this chapter.

401.1.1 Compliance with other alternatives. Alterations, repairs, additions and changes of occupancy to existing structures shall comply with the provisions of Chapters 4 through 12 or with one of the alternatives provided in Section 101.5.

401.2 Work area. The work area, as defined in Chapter 2, shall be identified on the construction documents.

401.3 Occupancy and use. When determining the appropriate application of the referenced sections of this code, the occupancy and use of a building shall be determined in accordance with Chapter 3 of the *Building Code of New York State*.

SECTION 403 ALTERATION—LEVEL 1
403.1 Scope. Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose.
403.2 Application. Level 1 alterations shall comply with the provisions of Chapter 6.

SECTION 601 GENERAL
601.1 Scope. Level 1 alterations as described in Section 403 shall comply with the requirements of this chapter. Level 1 alterations to historic buildings shall comply with this chapter, except as modified in Chapter 11.
601.2 Conformance. An existing building or portion thereof shall not be altered such that the building becomes less safe than its existing condition.

Exception: Where the current level of safety or sanitation is proposed to be reduced, the portion altered shall conform to the requirements of the Building Code of New York State.

601.3 Flood hazard areas. **In flood hazard areas, alterations that constitute substantial improvement shall require that the building comply with Section 1612 of the Building Code of New York State**.

SECTION 404 ALTERATION—LEVEL 2
404.1 Scope. Level 2 alterations include the reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment.
404.2 Application. Level 2 alterations shall comply with the provisions of Chapter 6 for Level 1 alterations as well as the provisions of Chapter 7.

SECTION 405 ALTERATION—LEVEL 3
405.1 Scope. Level 3 alterations apply where the work area exceeds 50 percent of the aggregate area of the building.
405.2 Application. Level 3 alterations shall comply with the provisions of Chapters 6 and 7 for Level 1 and 2 alterations, respectively, as well as the provisions of Chapter 8.

SECTION 1612 FLOOD LOADS

1612.1 General. Within flood hazard areas as established in Section 1612.3, all new construction of buildings, structures and portions of buildings and structures, including substantial improvement and restoration of substantial damage to buildings and structures, shall be designed and constructed to resist the effects of flood hazards and flood loads. For buildings that are located in more than one

flood hazard area, the provisions associated with the most restrictive flood hazard area shall apply.

1612.2 Definitions. The following words and terms shall, for the purposes of this section, have the meanings shown herein.

BASE FLOOD. The flood having a 1-percent chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

BASEMENT. The portion of a building having its floor subgrade (below ground level) on all sides.

DESIGN FLOOD. The flood associated with the greater of the following two areas:
1. Area with a flood plain subject to a 1-percent or greater chance of flooding in any year; or
2. Area designated as a flood hazard area on a community's flood hazard map, or otherwise legally designated.

DESIGN FLOOD ELEVATION. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where a depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet (610 mm).

DRY FLOODPROOFING. A combination of design modifications that results in a building or structure, including the attendant utility and sanitary facilities, being water tight with walls substantially impermeable to the passage of water and with structural components having the capacity to resist loads as identified in ASCE 7.
EXISTING CONSTRUCTION. Any buildings and structures for which the "start of construction" commenced before the effective date of the community's first flood plain management code, ordinance or standard. "Existing construction" is also referred to as "existing structures."

EXISTING STRUCTURE. See "Existing construction."

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land from:
1. The overflow of inland or tidal waters.
2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD DAMAGE-RESISTANT MATERIALS. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair.

FLOOD HAZARD AREA. The greater of the following two areas:
1. The area within a flood plain subject to a 1-percent or greater chance of flooding in any year.
2. The area designated as a flood hazard area on a community's flood hazard map, or otherwise legally designated.
FLOOD HAZARD AREA SUBJECT TO HIGH VELOCITY WAVE ACTION. Area within the flood hazard area that is subject to high velocity wave action, and shown on a Flood Insurance Rate Map (FIRM) or other flood hazard map as Zone V, VO, VE or V1-30.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the base flood and supporting technical data.

FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

LOWEST FLOOR. The floor of the lowest enclosed area, including basement, but excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of this section.

SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30.

START OF CONSTRUCTION. The date of permit issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the governing body shall adopt a flood hazard map

and supporting data. The flood hazard map shall include, at a minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in the applicable flood insurance study for the region, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

1612.4 Design and construction. The design and construction of buildings and structures located in flood hazard areas, including flood hazard areas subject to high velocity wave action, shall be in accordance with ASCE 24.

1612.5 Flood hazard documentation. The following documentation shall be prepared and sealed by a registered design professional and submitted to the code enforcement official:

1. For construction in flood hazard areas not subject to high-velocity wave action:
1.1. The elevation of the lowest floor, including the basement, as required by the lowest floor elevation inspection in Section 109.3.3.
1.2. For fully enclosed areas below the design flood elevation where provisions to allow for the automatic entry and exit of floodwaters do not meet the minimum requirements in Section 2.6.2.1 of ASCE 24, construction documents shall include a statement that the design will provide for equalization of hydrostatic flood forces in accordance with Section 2.6.2.2 of ASCE 24.
1.3. For dry floodproofed nonresidential buildings, construction documents shall include a statement that the dry floodproofing is designed in accordance with ASCE 24.
2. For construction in flood hazard areas subject to high velocity wave action:
2.1. The elevation of the bottom of the lowest horizontal structural member as required by the lowest floor elevation inspection in Section 109.3.3.
2.2. Construction documents shall include a statement that the building is designed in accordance with ASCE 24, including that the pile or column foundation and building or structure to be attached thereto is designed to be anchored to resist flotation, collapse and lateral movement due to the effects of wind and flood loads acting simultaneously on all building components, and other load requirements of Chapter 16.
2.3. For breakaway walls designed to resist a nominal load of less than 10 psf (0.48 kN/m2) or more than 20 psf (0.96 kN/m2), construction documents shall include a statement that the breakaway wall is designed in accordance with ASCE 24.

Appendix C FEMA Flood Designations

Definitions of FEMA Flood Zone Designations

Flood zones are geographic areas that the FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map. Each zone reflects the severity or type of flooding in the area.

Moderate to Low Risk Areas

In communities that participate in the NFIP, flood insurance is available to all property owners and renters in these zones:

ZONE	DESCRIPTION
B and X (shaded)	Area of moderate flood hazard, usually the area between the limits of the 100-year and 500-year floods. Are also used to designate base floodplains of lesser hazards, such as areas protected by levees from 100-year flood, or shallow flooding areas with average depths of less than one foot or drainage areas less than 1 square mile.
C and X (unshaded)	Area of minimal flood hazard, usually depicted on FIRMs as above the 500-year flood level.

High Risk Areas

In communities that participate in the NFIP, mandatory flood insurance purchase requirements apply to all of these zones:

ZONE	DESCRIPTION
A	Areas with a 1% annual chance of flooding and a 26% chance of flooding over the life of a 30-year mortgage. Because detailed analyses are not performed for such areas; no depths or base flood elevations are shown within these zones.
AE	The base floodplain where base flood elevations are provided. AE Zones are now used on new format FIRMs instead of A1-A30.
A1-30	These are known as numbered A Zones (e.g., A7 or A14). This is the base floodplain where the FIRM shows a BFE (old format).
AH	Areas with a 1% annual chance of shallow flooding, usually in the form of a pond, with an average depth ranging from 1 to 3 feet. These areas have a 26% chance of flooding over the life of a 30-year mortgage. Base flood elevations derived from detailed analyses are shown at selected intervals within these zones.
AO	River or stream flood hazard areas, and areas with a 1% or greater chance of shallow flooding each year, usually in the form of sheet flow, with an average depth ranging from 1 to 3 feet. These areas have a 26% chance of flooding over the life of a 30-year mortgage. Average flood depths derived from detailed analyses are shown within these zones.
AR	Areas with a temporarily increased flood risk due to the building or restoration of a flood control system (such as a levee or a dam). Mandatory flood insurance purchase requirements will apply, but rates will not exceed the rates for unnumbered A zones if the structure is built or restored in compliance with Zone AR floodplain management regulations.
A99	Areas with a 1% annual chance of flooding that will be protected by a Federal flood control system where construction has reached specified legal requirements. No depths or base flood elevations are shown within these zones.

High Risk - Coastal Areas

In communities that participate in the NFIP, mandatory flood insurance purchase requirements apply to all of these zones:

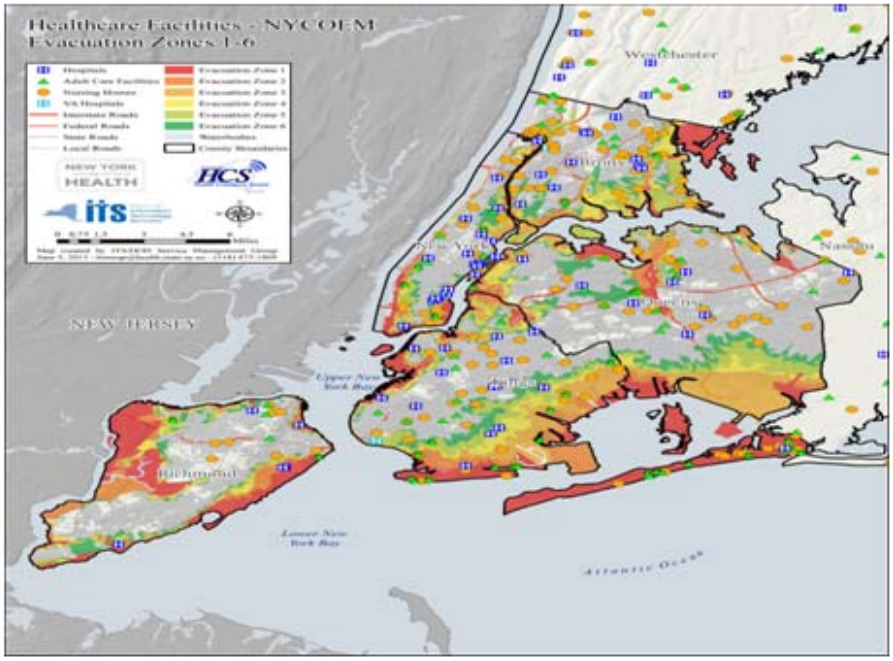
ZONE	DESCRIPTION
V	Coastal areas with a 1% or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26% chance of flooding over the life of a 30-year mortgage. No base flood elevations are shown within these zones.
VE, V1 - 30	Coastal areas with a 1% or greater chance of flooding and an additional hazard associated with storm waves. These areas have a 26% chance of flooding over the life of a 30-year mortgage. Base flood elevations derived from detailed analyses are shown at selected intervals within these zones.

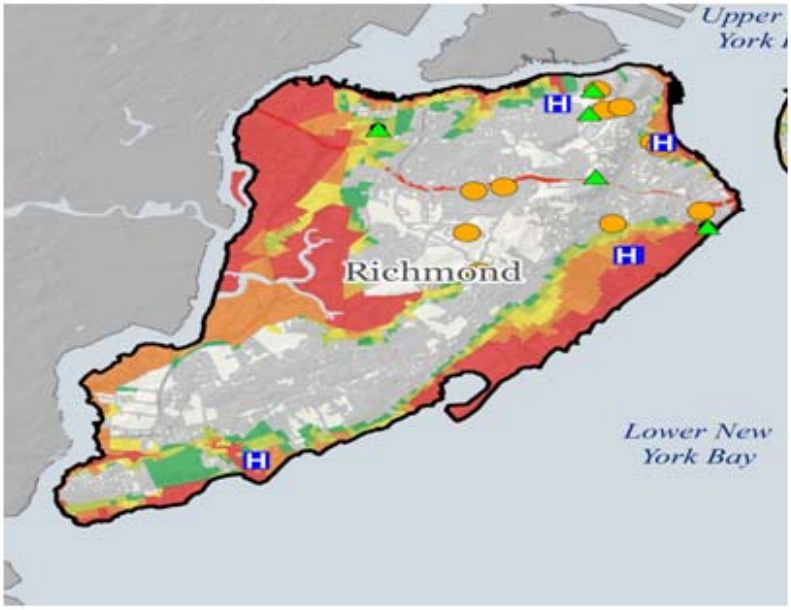
Undetermined Risk Areas

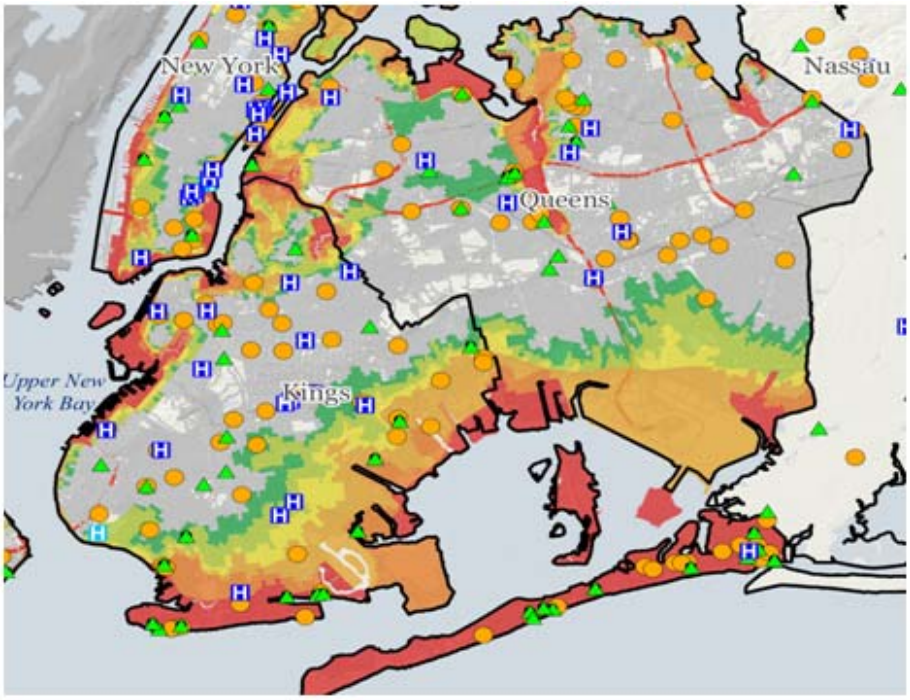
ZONE	DESCRIPTION
D	Areas with possible but undetermined flood hazards. No flood hazard analysis has been conducted. Flood insurance rates are

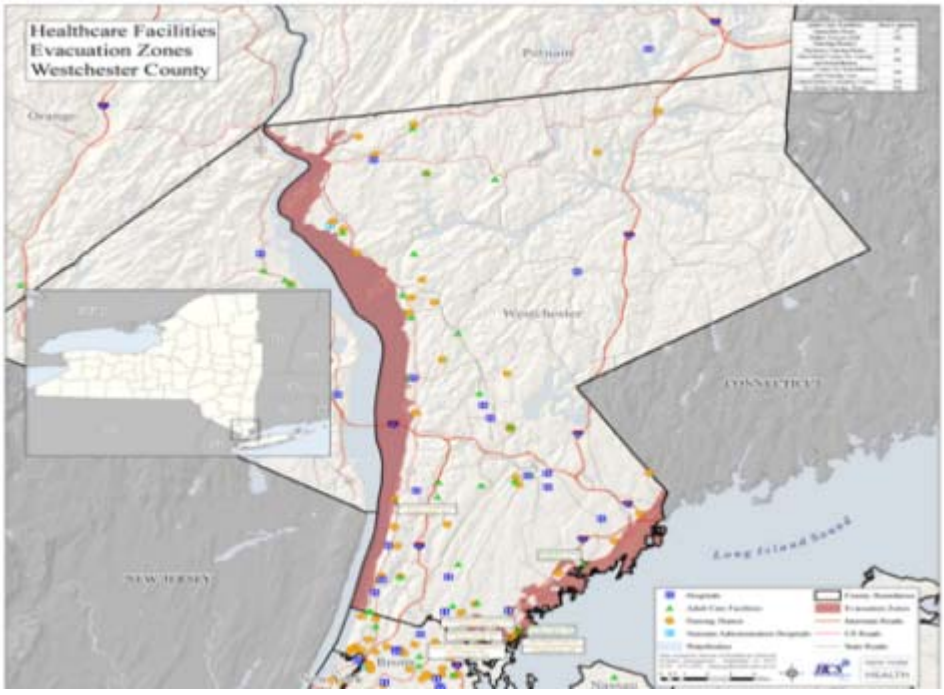
	commensurate with the uncertainty of the flood risk.

Appendix D: Maps of the Coastal Evacuation Zones



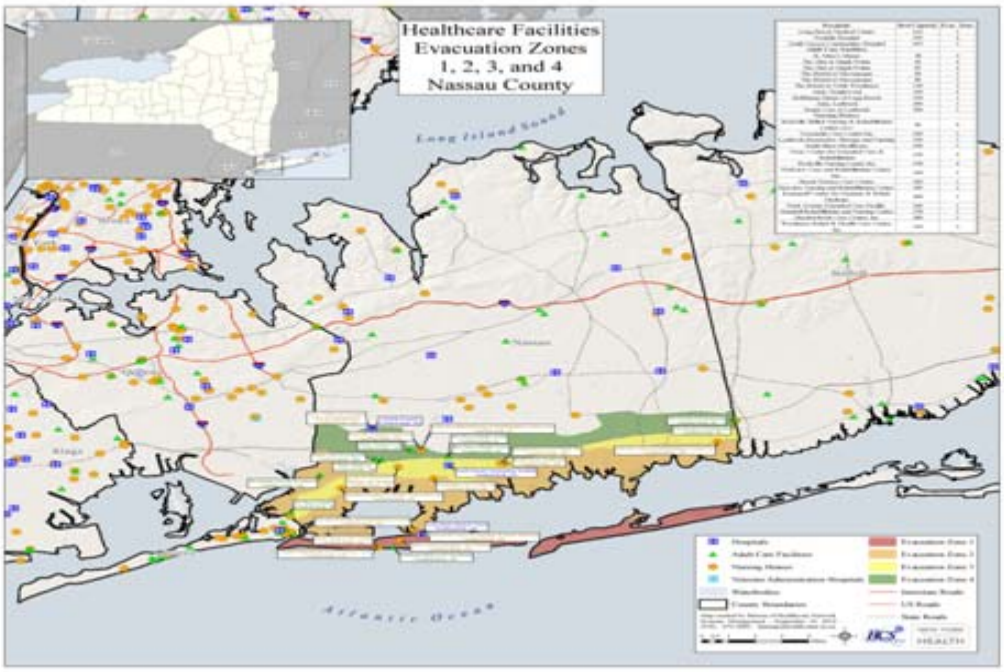


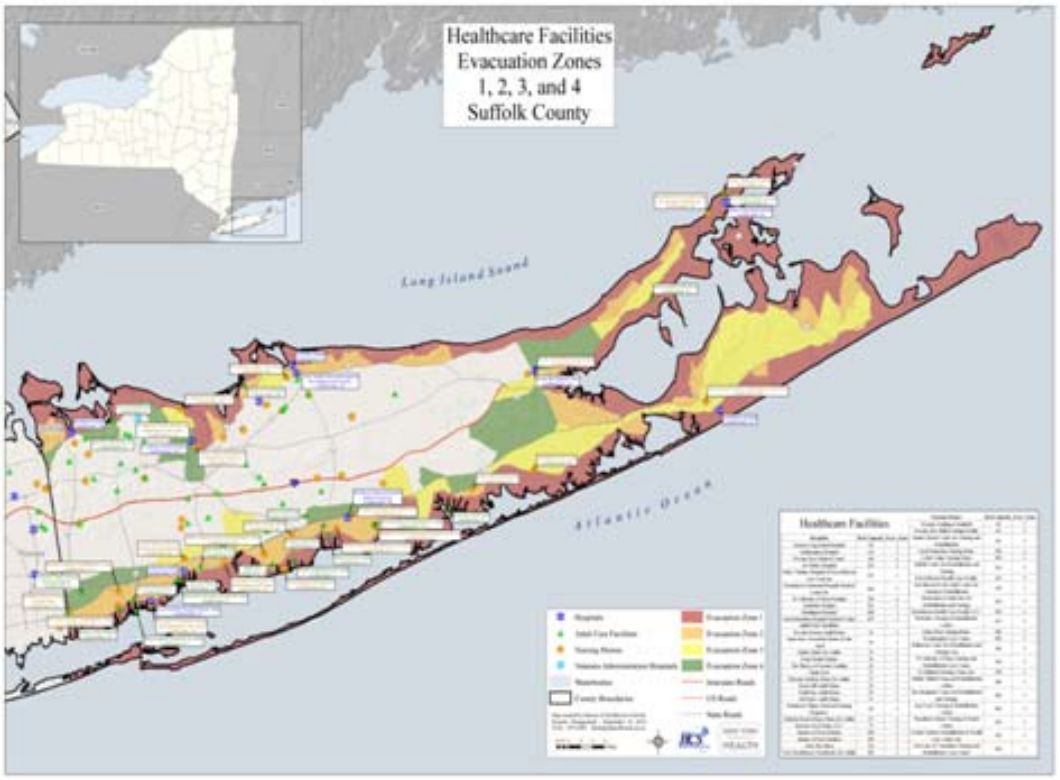




Westchester Cty

Long Island Evacuation Zones:




Healthcare Facilities
Evacuation Zones
1, 2, 3, and 4
Suffolk County
Long Island Sound
Atlantic Ocean
Healthcare Facilities

Appendix E: Mayor Bloomberg's Special Initiative for Rebuilding and Resiliency (SIRR) Recommendations

BUILDING A STRONGER, MORE RESILIENT NEW YORK IN THE AFTERMATH OF HURICANE SANDY

Sections from Chapter 8 – Healthcare Recommendations

New York City's population of 8.2 million includes people with a wide range of health needs. Many—in relatively good health—see their doctors infrequently, but all count on them to be available if they get injured or become sick. Over 1 million New Yorkers, on the other hand, are in poor health—which could include those who have chronic conditions such as diabetes and high blood pressure—and these individuals depend on regular, ongoing medical care. Furthermore, there are 800,000 New Yorkers under the age of five or over the age of 80 who are more vulnerable to illness and injury and more likely to need life-saving medical care.

A vast, complex healthcare system has evolved to meet the needs of New York's diverse population, and Sandy caused disruptions across that system. The storm completely shut down six hospitals and 26 residential-care facilities. More than 6,400 patients were evacuated through efforts coordinated by the Healthcare Evacuation Center (HEC). Providers who remained open strained to fill the healthcare void—hospitals repurposed lobbies as inpatient rooms, adult care facilities siphoned gas from vehicles to run emergency power generators, and nursing home staff lived on-site for four or more days until their replacements arrived. Flooding and power outages forced community clinics, doctors' offices, pharmacies, and other outpatient facilities to close or reduce services in the areas most impacted by the storm.

Sandy not only put unprecedented stress on the provider system; it placed the health of medically fragile individuals at risk. There were an estimated 75,000 people in poor health living in areas that were inundated by floodwaters and an estimated 54,000 more in communities that lost power. These groups faced additional health risks during the storm and were less capable of gaining access to appropriate care. For example, lack of heating in their buildings could have caused new health conditions, and those who lived in high-rise buildings might have been unable to leave their homes if elevators were not functioning. Furthermore, the unpredictable storm conditions increased the risk that any New Yorker could require life-saving medical care.

In keeping with the overarching goals of the Special Initiative for Rebuilding and Resiliency—to minimize the impacts of climate change and enable quick recovery after extreme weather events—the City will make the healthcare system more resilient. To ensure that hospitals, nursing homes, and adult care facilities can operate continuously during extreme weather, the City will require that new facilities be built to higher resiliency standards and existing providers are hardened to protect critical systems. To reduce barriers to care in impacted communities, the City will seek to keep the lines of communication open between patients and their providers and enable affected community-based providers to reopen quickly after a disaster. Making our healthcare system more resilient will benefit our most fragile populations—and all New Yorkers.

What Happened During Sandy

New York City's healthcare system is designed to handle fluctuations in demand as healthcare needs vary seasonally. However, the cascading closures of providers during and after Sandy strained the system citywide. Because of the closures, providers that remained open had to operate beyond normal capacity, which was difficult to sustain for extended periods. To ensure they were able to address the most acute medical needs, some providers that remained open reduced certain services they offered—for example, postponing non-emergency surgeries or suspending outpatient procedures.

Disruptions in citywide systems—transportation, fuel, telecommunication, and power—had a noticeable but short-term impact on the healthcare system. Transportation outages and restrictions, as well as fuel restrictions, made it difficult for healthcare staff to travel to workplaces in the first week after the storm. Telecommunication breakdowns meant that impacted providers were unable to communicate with patients, and also made coordination with City and State officials for response efforts more challenging. Power outages closed some community-based providers for up to a week, while flood damage closed a limited number of providers for much longer, necessitating repairs and the replacement of destroyed equipment.

Across the city, five acute care hospitals and one psychiatric hospital closed. This resulted in the emergency evacuation of nearly 2,000 patients coordinated by the HEC, in addition to an unknown number of patients who were transferred within provider networks or were discharged before or after Sandy. Of these, three hospitals closed in advance of the storm: New York Downtown (Manhattan) closed after notice of a potential pre-emptive utility shutdown, while the Veterans Affairs New York Harbor Hospital (Manhattan) and South Beach Psychiatric Center (Staten Island) closed due to concerns about flooding. Three other hospitals—New York University's Langone Medical Center (Manhattan), Bellevue Hospital (Manhattan), and Coney Island Hospital (Brooklyn)—evacuated during or after Sandy due to the failure of multiple electrical and mechanical systems including emergency power systems. In the

immediate aftermath of Sandy, hospital bed capacity was down eight percent citywide.

Meanwhile, 10 hospitals remained open despite power outages and/or limited flooding in basement areas. In the week after the storm, Beth Israel in Manhattan—powered only by back-up generators due to the area-wide power outage—saw a 13 percent increase in ED use. To meet patient demand, the hospital suspended elective procedures and surgeries. Other hospitals used workarounds in response to communication and information technology (IT) failures. For example, runners on each floor conveyed doctors' orders, paper charts replaced electronic records, and two-way radios were used to communicate with other providers. To handle the influx of patient evacuees, some receiving hospitals turned lobbies into inpatient wards and gave emergency permission for OB/GYNs displaced from other hospitals to deliver babies in their facilities.

Some hospitals narrowly escaped flood damage. For example, Metropolitan Hospital in upper Manhattan just missed having its critical electrical systems flooded, and on Staten Island University Hospital's North Campus, floodwaters came within inches of the hospital entrance.

New York City hospitals incurred an estimated $1 billion in costs associated with emergency response measures taken during and immediately after Sandy, including the costs of staff overtime, patient evacuations, and emergency repairs of equipment. To return to normal operations, as of the writing of this report, it is projected that damaged hospitals will spend at least another $1 billion on repairs and mitigation. In addition, permanent revenue loss for hospitals citywide is estimated to have been nearly $70 million per week in the immediate aftermath of the storm. Hospitals that were closed due to serious damage experienced revenue losses over many months.

Sandy's impact on residential providers was also significant. Sixty-one nursing homes and adult care facilities were in areas impacted by power outages and/or flooding. Half of these providers continued to operate—some because they sustained minimal or no damage, others because they had effective emergency plans. But within a week of the storm, 26 facilities had to shut down, and another five partially evacuated, reducing citywide residential capacity by 4,600 beds and leading to the evacuation of 4,500 residents who had to be transported to other facilities or Special Medical Needs Shelters, which were staffed by personnel from the New York City Health and Hospitals Corporation (HHC) and Disaster Medical Assistance Teams (DMAT). These closures impacted hospitals as well, preventing them from discharging patients to nursing homes, as they normally would have done. Instead, hospital beds that could have been available for new patients remained occupied by existing patients who had nowhere else to recover after treatment.

Power loss was the primary cause of post-Sandy evacuations from nursing homes and adult care facilities, and many providers experienced both utility outages and damage to building electrical equipment. Even providers with generators had difficulties if those generators were located in parts of buildings that flooded or if providers had failed to secure fuel in advance. Without power, other critical systems—lights, heating, elevators, kitchens, and medical equipment—could not function.

Although two nursing homes and one adult care facility evacuated patients in advance of the storm, 28 others evacuated under emergency conditions. These stressful emergency scenarios added significantly to patient risk (though, fortunately, there was no loss of life during any Sandy-related evacuations in the city). Some evacuees were transported without medical records or proper identification, making it difficult for receiving providers to administer appropriate care or notify evacuees' families and caretakers.

Among other residential providers, the majority with fewer than 10 beds, approximately 5 percent of facilities were located in inundated areas, and another 10 percent were in areas impacted by power outages. These disruptions caused some facilities to evacuate patients while others remained safely sheltered in place. Overall, however, these evacuations did not significantly impact the broader healthcare system because many evacuees were safely transferred to other providers.

Community-based providers in over 500 buildings across the city (5 percent of total community-based provider buildings) were located in inundated areas, including 300 buildings with doctors' offices, 100 retail pharmacies, and at least 70 outpatient and ambulatory care centers. Flooding in facilities in low-rise buildings or on the lower levels of taller buildings resulted in damage that often took weeks or even months to repair. Providers on higher floors could not reopen until damaged electrical systems, boilers, elevators, and other building systems were repaired.

An additional 12 percent of community-based providers' buildings were in areas that experienced power outages only. Since most community-based providers occupy buildings without generators, these providers typically remained closed until utilities were restored.

The impact of community-based provider closures was felt most in the areas hardest hit by the storm. In South Queens, for example, 60 percent of provider buildings were in inundated areas, while in Southern Manhattan, 95 percent of providers experienced power outages. Elsewhere in the city, community-based care was only affected if doctors and staff could not travel to their offices. Most providers opened as soon as transportation was restored.

New Yorkers whose providers' facilities closed often were left without a way to see or communicate with their providers. For many without immediate medical concerns, the temporary closures may have had limited impact. However, others with pressing healthcare needs—dialysis patients or those on methadone, for instance—had to seek alternative care immediately, often from hospital emergency departments or mobile medical vans staffed by doctors and nurses from community clinics and other healthcare workers. The longer providers remained closed, the greater the numbers of individuals who had to look elsewhere for care.

Home-based care was impacted primarily by disruptions in the transportation system. The public transportation shutdown, travel restrictions on single-occupancy cars, and gasoline shortages all made it difficult for nurses and aides to reach the homes of patients scattered across the five boroughs. If and when providers finally did reach their destinations, elevators that were out of

service—due to power outages or flood damage—often made it challenging for staff to reach patients on upper floors in high-rise buildings. The power, water, and heat outages within patients' homes were also problematic, increasing the likelihood that existing medical conditions would worsen or new ones would develop.

What Could Happen in the Future

Now and over the next 40 years, the primary climate risks facing the healthcare system are expected to be storm surge and heat waves.

Major Risks

Newly released Preliminary Work Maps (PWMs) from the Federal Emergency Management Agency (FEMA) place at least 300 more buildings housing healthcare providers in the 100-year floodplain than were in the floodplain in the 1983 Flood Insurance Rate Maps (FIRMs). Based on high-end projections for sea level rise from the New York City Panel on Climate Change (NPCC), another 200 facilities will be in the 100-year floodplain by the 2020s, and a total of 1,000 healthcare facilities will be in the 100 year floodplain by the 2050s. If the vulnerabilities of healthcare providers to flooding are not addressed, 10 percent of New York City's healthcare buildings will be at risk of damage and closure in the event of a major flood event under this scenario.

Among the vulnerable healthcare facilities are hospitals with 10 facilities—representing 16 percent of hospital beds citywide—in the 100-year floodplain, as indicated by the PWMs, and one more is in the 500-year floodplain. This one facility is expected to be added to the 100-year floodplain by the 2020s, with two more likely to be added by the 2050s. By mid-century, hospitals in the 100-year floodplain are expected to include three psychiatric hospitals and four regional trauma centers

Meanwhile, 37 nursing homes and adult care facilities, representing 14 percent of citywide bed capacity, are in the 100-year floodplain, as indicated by the PWMs, with seven more likely to be in the floodplain by the 2020s. By the 2050s, 33 nursing homes and 25 adult care facilities are likely to be in the 100-year floodplain, many of these (approximately 60 percent) in Southern Brooklyn and South Queens. Among other residential care facilities, approximately 70 are in the floodplain, (7 percent of citywide bed capacity), with another 50 (an additional 5 percent of citywide bed capacity) likely to be added by the 2050s.

Among community-based providers, approximately 5 percent of buildings with providers are in the 100-year floodplain, as indicated by the PWMs. There are approximately 550 buildings with community clinics, doctors' offices, pharmacies, and other outpatient and ambulatory care centers in the 100-year floodplain and nearly 400 more buildings are expected to be in the floodplain by the 2050s.

Other Risks

In addition to storm surge, heat waves pose a serious health risk to New Yorkers. They can cause deaths by exacerbating chronic conditions and inducing heat-related medical conditions, such as heat stroke. Heat waves are particularly life-threatening to elderly and medically fragile individuals who do not have air conditioning in their homes. Even New Yorkers who do have air conditioning will be impacted if heat waves lead to widespread power outages. In addition, power outages from heat waves cause disruptions in the healthcare system citywide. Community-based providers would likely have to shut down until power is restored. Hospitals, nursing homes, and adult care facilities would not need necessarily to evacuate immediately, provided they had backup generators to maintain adequate cooling capacity. However, today the vast majority of these facilities do not have backup power for cooling of their inpatient units.

Sudden downpours and wind are unlikely to have a significant impact on healthcare providers, particularly as facilities with the most vulnerable patients (for example, hospitals) are required to have greater structural resiliency than regular commercial buildings. However, specific facilities may be at risk depending on their site drainage capacity for heavy rains and their façade, window, and rooftop conditions

INITIATIVES FOR INCREASING RESILIENCY IN THE HEALTHCARE SYSTEM

To preserve the health and well-being of all New Yorkers, the City's healthcare system must maintain sufficient capacity to meet patients' needs during disasters and be prepared to resume normal services as quickly as possible. To this end, the City will require flood-prone hospitals, nursing homes, and adult care facilities to provide redundancies for critical systems and prevent physical damage to equipment. These facilities account for almost 90 percent of all inpatient and residential bed capacity at risk of flooding. If successfully mitigated, they can stay open and ensure that system capacity is not heavily strained during disasters. The remaining residential bed capacity at risk of flooding is spread across many smaller providers citywide. The vulnerability of these providers to climate risks is typically best addressed through emergency planning and other operational solutions, especially because physical protection of these facilities may be too difficult and not cost-effective given building and physical constraints.

Since community-based providers are located citywide, most will not be affected by flooding from extreme weather events. However, those impacted will be highly concentrated in hard hit communities. The City will, therefore, work with clinics and pharmacies to implement targeted mitigation in areas where services may be most needed after a disaster. To further reduce barriers to the restoration of community based care, the City will also call upon outpatient providers to consider technology based mitigation strategies that are appropriate to their scale and allow for faster recovery.

Furthermore, measures to increase the resiliency of citywide power, transportation, and water systems will ensure that community based and home-based providers can recover the resources that they depend on most as quickly as possible.

Strategy: *Ensure critical providers' operability through redundancy and the prevention of physical damage*

Hospitals, nursing homes, and adult care facilities rely on extensive equipment and utility services to diagnose, treat, and care for patients. Basic utilities (such as power and water supply); building

equipment (heating, ventilation, air conditioning, and elevator systems); medical equipment (diagnostic labs, X-ray machines, and medical gas tanks); and other services (such as kitchens and laundry rooms) are all integral to normal patient care. Much of this equipment is located in the facilities' lower levels, which are at risk of flooding during extreme weather events. Fortunately, providers have operational plans and workarounds for many of these systems in case of disruptions.

However, some systems—power, water, heating, and air conditioning—require both operational planning and physical hardening to be made more resilient. These systems are the foundation of a facility's medical infrastructure and are essential for the operation of all other services and equipment, including emergency operations. Without these critical systems, providers cannot ensure safe patient care and may be forced to evacuate. Furthermore, severe damage to these systems can result in long-term closures as repairs can often take several months.

Therefore, the City will amend its Construction Codes to require new and existing healthcare providers to take actions that ensure critical building systems are physically protected from the impacts of extreme weather, and—to address outages—are supplied with backup systems. The City also will provide financial assistance to support the mitigation projects of providers who have limited funding sources. These new resiliency measures will minimize the risk of evacuating patients and keep important healthcare facilities open for the benefit of all New Yorkers.

Initiative 1: Improve the design and construction of new hospitals

New hospitals that are constructed in the floodplain could experience critical system failures due to storm surge and may be at risk of evacuating patients. To improve the resiliency of any new hospital that is built in the 500-year floodplain, the City will, therefore, amend its Construction Codes to require a higher level of protection and critical systems redundancy.

For example, new hospital buildings will be required to meet construction code standards for flood-resistant construction to the 500-year flood elevation, which is a higher than the 100-year flood elevation to which protection is required today. Protecting utilities and mechanical equipment to this higher flood level will ensure that new hospitals—which are expected to serve the city for many decades—will be protected even as climate change increases flood risk.

In addition, the City will institute new resiliency requirements related to electronic data and communications technologies, which play an increasingly central role in patient care. New hospitals in the 500-year floodplain will be required to increase their IT and telecommunications resiliency by installing two independent points-of-entry for telecom and communication to reduce the risk of outages from a single supplier. Backup options are crucial to ensure that critical systems can function and long-term closures can be avoided. New hospitals will, therefore, also be required to be built with pre-wired electrical connections for external emergency power generators as well as for temporary boiler and chiller connections if the primary equipment is below the 500-year flood elevation.

In addition, new hospitals in the 500-year floodplain will be required to ensure that air conditioning services to their inpatient care areas are available when utility power is disrupted (for example, by placing chiller systems on emergency power). Having an air conditioning solution that is not dependent solely on primary utility power will help avert evacuations. These measures will ensure that providers do not incur high costs later for damages, repairs, or retrofits. The Office of Long-Term Planning and Sustainability (OLTPS) will include the proposed amendments to the New York City Construction Codes in its broader proposal to the New York City Council in the latter half of 2013.

Initiative 2: Require the retrofitting of existing hospitals in the 500-year floodplain

Many existing hospital buildings in the floodplain remain vulnerable to the impact of storm surge. To improve the resiliency of these buildings, the City will require existing hospital buildings in today's 500-year floodplain to meet, by 2030, a subset of the amended New York City Construction Codes standards through building retrofits.

This mandate will apply to the eleven hospitals that are, as indicated by the PWMs, in the floodplain. They will be mandated to protect their electrical equipment, emergency power systems, and domestic water pumps to the 500-year flood elevation by elevating the equipment, hardening equipment in place (for example, through the use of submarine doors), or dry flood-proofing basements and lower floors. They will also be required to ensure that emergency power systems—generators and fuel pumps—are accessible to building staff at all times, so that emergency power can be maintained continuously, even during flood conditions.

As with new hospitals, existing hospitals will also be required to install by 2030: Backup air conditioning service for inpatient care areas in case of utility outages (for example, chillers on emergency power); pre-connections for temporary boilers and chillers if primary equipment is not elevated; and pre-connections for external generators as a backup power source in case the hospital must run on emergency power for extended periods. These redundancies will provide an additional level of protection for hospitals' most critical services, and thus, will help avert evacuation in the event that primary equipment is breached or permanently damaged.

Many providers have already met several of these requirements. For example, many hospital generators are elevated today. In addition, providers generally acknowledge that power, emergency power, and water are necessary for them to remain operational, and investments in flood mitigation are needed to minimize future evacuation risk. Accordingly, many providers already have made plans to address these risks. To avoid placing an undue financial burden on providers, hospitals will not be mandated to retroactively protect other critical systems and services (such as emergency departments, elevators, lab equipment, telecommunications, IT, and medical equipment) for which other workarounds can be implemented. Never the less, protection for these systems still will be encouraged as a best practice especially since they could be essential for some facilities to remain in operation, depending on their layout and unique risks.

OLTPS will include these retrofit requirements in its broader proposal to the New York City Council in 2013. The City will enforce compliance with this mandate by 2030 (recognizing compliance to be voluntary for hospitals owned by the State or Federal government). As part of this process, by the end of 2020, hospitals will be required to submit an interim report certifying that they have complied with the requirements or to submit an affidavit describing a plan to achieve such compliance by 2030. Hospitals added to the floodplain in future versions of flood maps will have 15 years from the release of such new maps to implement retrofits.

Initiative 3: Support the Health and Hospitals Corporation's (HHC) effort to protect public hospital emergency departments from flooding

Emergency departments (EDs) are critical access points for patients in need of hospital services. Three public hospitals' EDs are at risk of flooding due to storm surge. Subject to available funding, the City will aim to ensure these EDs are protected and available to care for New Yorkers. Bellevue Hospital (Manhattan), Metropolitan Hospital (Manhattan), and Coney Island Hospital (Brooklyn) are operated by the New York City HHC, which serves all New Yorkers, regardless of their ability to pay. With EDs located below the 500-year flood elevation, direct flood damage would cause the EDs to be closed for months, as equipment, walls, and floors would need to be replaced. Extended closures would require patients to travel longer distances to receive care, and other providers to accommodate additional volume.

Bellevue Hospital has the only designated regional trauma center below 68th Street in Manhattan. The City will pursue a coastal protection pilot project, subject to available funding, which includes measures to address the flood risk to Bellevue's ED. Mitigation options under consideration include floodwalls and ramps. The City will also support HHC's on-going efforts to work with the State and Federal governments to identify mitigation solutions and funding sources that allow its other EDs to be protected from flooding. Current options being explored include elevating Coney Island Hospital's ED and other critical building systems above the 500-year flood elevation and installing temporary or permanent floodwalls around Metropolitan Hospital's ED and campus

Initiative 4: Improve the design and construction of new nursing homes and adult care facilities

New nursing homes and adult care facilities are at risk of power service failures due to storm surge, which could result in patient evacuations. To address this risk, the City will amend its Construction Codes to require that new facilities be constructed with additional resiliency measures for their emergency power systems, which are essential to allow staff and patients to shelter in place safely during a disaster. Power in these residential facilities is needed not only for standard operational requirements—such as lighting, elevators, use of medical equipment, and communications—but also for essential emergency operations such as pumping floodwater out of basements if flood protection fails.

New nursing homes are already required to have emergency generators, but because generators can fail when used for an extended period of time, facilities will now be required to have in place an electrical pre-connection for an external stand-by generator. The ability to switch electrical systems over quickly to a stand-by generator can reduce significantly the likelihood of emergency evacuations during or after a disaster.

Meanwhile with respect to adult care facilities, they are not currently required by the State or City to have any emergency power systems. Their residents are more ambulatory and less fragile than nursing home patients but, nevertheless, require care and living assistance that is dependent on working electricity. For this reason, the City will require new facilities to install either an emergency generator that is adequately protected or pre-connection to an external stand-by generator. OLTPS will propose these requirements for new nursing homes and adult care facilities to the City Council in the latter half of 2013.

Initiative 5: Require the retrofitting of existing nursing homes in the 100-year floodplain

Among all the critical systems that nursing homes rely on for normal operations, power and water are the most essential during emergency conditions because they are required for so many other services such as heating, air conditioning, sanitation, and elevator services.

The City will therefore require existing nursing homes in the 100-year floodplain which, as indicated by the PWMs, includes 18 facilities (11 percent of the citywide bed capacity), to meet standards by 2030 for the protection of electrical equipment, emergency power systems, and domestic water pumps (if applicable) retroactively pursuant to changes in the City's Construction Code. These systems will be protected to the 100-year flood elevation, in accordance with specifications already in the New York City Construction Codes.

OLTPS will propose these requirements to the City Council in the latter half of 2013. The City will enforce compliance with this mandate. As part of this process, by the end of 2020, nursing homes will be required to submit an interim report certifying that they have complied with the retrofit requirements or to submit an affidavit describing a plan to achieve such compliance by 2030.

Because it may be difficult for some nursing homes to secure the financial capital needed for retrofit projects, a financial assistance program will be launched by the City, subject to available funding (see Initiative 7). Nursing homes that are added to the floodplain with the release of future flood maps will be required to comply within 15 years of such new flood maps going into effect.

Initiative 6: Require the retrofitting of existing adult care facilities in the 100-year floodplain

Over 25 percent of citywide adult care facility bed capacity is in the 100-year floodplain (within 19 facilities) and is at risk of power outages due to storm surge. Many of these facilities have their

electrical equipment in lower levels where it is vulnerable to flooding. Furthermore, these facilities are also at risk of power outages during heat waves. In either case, power outages would increase the risk of emergency evacuations. The City will, therefore, require existing adult care facilities located in the 100-year floodplain to elevate or protect their electrical equipment to the 100-year flood elevation, in accordance with the specifications applicable to new buildings in the New York City Construction Codes. In addition, these providers will be required to install an emergency generator that is adequately protected in their facilities. Alternatively, they may install an electrical pre-connection to an external generator provided they have an operational plan in place that allows them to access an external generator quickly during an emergency (through, for example, regular contracts with suppliers).

OLTPS will propose these requirements to the City Council in the latter half of 2013. The City will enforce compliance with this mandate. As part of this process, by end of 2020, adult care facilities will be required to submit an interim report certifying that they have complied with the retrofit requirements or an affidavit describing a plan to achieve such compliance by 2030. As with nursing homes, adult care facilities will be eligible for financial support, subject to available funding, to comply with the mandate (see Initiative 7). Moving forward, facilities that are added to the floodplain with the release of future flood maps will be required to comply within 15 years of the new flood maps going into effect.

Initiative 7: Support nursing homes and adult care facilities with mitigation grants and loans

The primary obstacle for most nursing homes and adult care facilities in implementing mitigation measures is financing the investment.

Subject to available funding, the City, through DOHMH and the New York City Economic Development Corporation (NYCEDC), will, therefore, administer competitive grants and subsidized loans to assist providers with the upfront costs of certain mandated retrofit projects.

Most nursing homes and adult care facilities receive the majority of their revenue from publicly funded programs such as Medicaid, Supplemental Security Income, or Safety Net Assistance. Typically, reimbursement rates from these programs are not sufficient to enable nursing homes and adult care facilities to invest in costly mitigation projects that do not impact day-to-day care directly. If any capital investments are made, some nursing homes may receive Medicaid reimbursements for a portion of their mitigation costs; while other providers may not be reimbursed.

To qualify for the program, nursing homes and adult care facilities will be required to demonstrate financial need, emergency preparedness planning, and an operational commitment to remain safely open during disasters or reopen quickly thereafter. Eligible mitigation will include retrofits to meet amended building codes (see Initiatives 5 and 6) and wet flood-proofing of walls and floors below the 100-year flood elevation to limit damage from mold. The goal is for NYCEDC and DOHMH to launch the program, capped at $50 million citywide, when the proposed building code amendments for nursing homes and adult care facilities go into effect.

Initiative 8: Increase the air conditioning capacity of nursing homes and adult care facilities

Nursing homes and adult care facilities today typically do not have enough emergency power capacity to run their air conditioning systems. Thus, some providers could be forced to evacuate during power outages that occur in hot summer months. To reduce this risk, the City will seek a sales tax waiver for 100 nursing homes and adult care facilities citywide to install emergency power solutions for their air conditioning systems. This benefit, which will be capped at $3 million citywide, will only be available to those facilities eligible for such benefits under state law. Eligibility criteria for this program will be announced over the next year and will, among other things, include demonstrated financial need.

Strategy: Reduce barriers to care during and after emergencies

Additional initiatives, spearheaded by the City in collaboration with healthcare associations and providers, will ensure that community-based providers in the healthcare system can provide limited but critical services under emergency conditions and restore normal services as quickly as possible after a disaster. The City's goal is to improve the resiliency of the community-based provider network so that even in the hours and days immediately after a disaster, when other local businesses are still recovering, healthcare providers can offer essential services to New Yorkers with the greatest need for care.

Initiative 9: Harden primary care and mental health clinics

In communities that are at risk of extensive flooding, the accessibility of primary care and mental health services may be compromised for weeks after a disaster due to extended facility closures. Ensuring that local clinics can reopen quickly to provide primary care, mental health counseling, and other medical services in high-need communities is important for the health and safety of residents and will address the concentrated impact of storm surge.

Subject to available funding, the City, through DOHMH and a fiscal intermediary, will therefore disburse grants and interest-free loans to five to six providers that serve large outpatient populations in communities where medical services may be reduced significantly because of extreme weather events. These capital investments will enable faster recovery of services—for example, via installation of emergency power systems, protection of other critical building systems, and wet flood-proofing of facilities. The goal is to launch an application process during the next year. The selection process will prioritize clinics that offer a broad scope of medical services, and demonstrate adequate emergency operations plans.

Initiative 10: Improve pharmacies' and other medically necessary power resiliency

Pharmacies dispense life-saving drugs. However, without power, pharmacists cannot access the necessary patient records or insurance information to dispense these drugs. For retail pharmacies that do not sustain structural building damage, generators allow

providers to restore the most critical building services they need to reopen. With an emergency power supply, pharmacies can access patient records, receive calls from doctors about new prescriptions or refills, and communicate with insurers and payers for billing purposes. To reopen with emergency power, pharmacies also will need to have robust emergency operations plans ensuring staff transportation and the delivery of supplies to the facility. For New Yorkers who depend on regular prescriptions, quick restoration of pharmacy services is critical.

DOHMH will, therefore, work with other agencies, including Office of Long-Term Planning and Sustainability, the Office of Emergency Management, the Department of Transportation, the Department of Buildings, the Department of Environmental Protection, and pharmacies to assist pharmacies to reopen quickly after a disaster. DOHMH will explore issues such as installing pre-connections for external generators, identifying a central emergency point of contact, permitting, and emergency operations planning. By the end of 2013, DOHMH will launch an emergency preparedness website for pharmacies.

Initiative 11: Encourage telecommunications resiliency

In the aftermath of a disaster, it is important that New Yorkers be able to speak to their doctors for guidance on needed medical care. While in-person visits are ideal for diagnosing and treating health concerns, a phone consultation can be extremely valuable in addressing many patients' needs after a disaster.

For example, a telephone conversation allows a trusted doctor who is familiar with a patient's medical history and specific health conditions to help with post-disaster anxiety, answer health-related questions, perform initial triage of medical concerns, refill prescriptions, or direct patients to alternative providers and medical resources. Telecommunications resiliency is especially important for mental health providers who may need to support patients during the extremely stressful period after a disaster.

To this end, DOHMH is developing a best practice guide and outreach plan to help community based providers understand the importance of telecommunications resiliency as well as the options they might consider and questions to ask when evaluating solutions. Resiliency solutions could include using backup phone systems (such as a remote answering service that would not be affected by local weather hazards), Voice over Internet Protocol (VoIP) technology that allows office phone lines to be used off-site, and pre-disaster planning to inform patients of available emergency phone numbers. DOHMH will continue to develop the informational materials through the remainder of 2013.

Initiative 12: Encourage electronic health record-keeping

Doctors rely on patients' medical records to provide and track care, but these important records may be compromised or destroyed due to flooding. Damage to paper records results in the loss of valuable patient information, which may impact care. In addition, the specialized disposal of this sensitive material once damaged can result in high waste removal costs.

Electronic Health Records can help prevent the permanent loss of data and allow for quick restoration of services after a disaster. However, even EHR systems need to be implemented with operational resiliency in mind. For example, providers might want to ensure that they can still access patient information even if they cannot occupy their offices. In addition, providers must ensure that computers and servers are not located on floors where they may be flooded. Their vendors' servers must also be protected from flood risk.

DOHMH's Primary Care Information Project (PCIP) sponsors numerous initiatives to help primary care and mental health providers citywide with EHR technical assistance for their practices. Moving forward, PCIP programs will highlight the ways in which EHR can be used to prevent permanent loss of data and quickly restore services after a disaster. PCIP will target providers, in the floodplain, that can benefit significantly from transitioning to EHR, with specific guidance on how EHR should be implemented for maximum effectiveness in flood hazard mitigation.

Appendix F: American Institute of Architects (AIANY) - Recommendations

POST SANDY INITIATIVE

Building Better, Building Smarter: Opportunities for Design and Development May 2013

AIANY Design for Risk and Reconstruction Committee (DfRR)

Sections from the Recommendations with emphasis on the Critical and Commercial Buildings Chapter

Since October 2012, numerous initiatives are under way at local, regional, and federal levels to determine how to respond to future impacts from such storms, which are anticipated to happen with even greater frequency and intensity.

Sandy's unexpected power and breadth created a need for realistic standards to protect communities in the way of future storms—which may be even more powerful in terms of wind, rain, and potential damage. This unprecedented challenge, complicated by estimates of rising sea levels and increasing frequency of events, will define how we plan and regenerate the inundated areas and the regional context. Even as people and buildings suffered terrible direct impacts, the City and region as a whole suffered massive indirect impacts of the storm. Adverse effects to economic vitality, communications infrastructure, and connectivity networks were widespread.

The initial step in any disaster is **response**, preserving life and critical property in the midst and immediate aftermath of the event (ideally preceded by effective pre-planning for evacuation and staging of needed resources). This is followed by **recovery**, returning to as much normalcy as possible, in turn followed by organized and deliberate rebuilding. The overarching long-term objective is **resilience**—modifying buildings and land-use patterns over time, and infrastructure where significant investment prevents physical relocation, and waterfront edges that transition between the shore and upland areas— hardening and/or softening as relevant to mitigate the impact of future events.

In order to deal with these challenges, Mayor Michael Bloomberg's Special Initiative for Rebuilding and Resiliency (SIRR) program is engaged in preparing an integrated strategy to address how we rebuild New York City to be more resilient in the wake of Hurricane Sandy, but with a long-term focus. The City will use its first allocation of federal Community Development Block Grant (CDBG) funds to support recovery from Sandy and to build in resilience to the challenges of climate change, including programs to build and support housing, businesses, infrastructure, and other city services. This process, undertaken through the coordination of numerous governmental agencies and multidisciplinary advisors, relies heavily on community outreach to define issues and priorities. As planning and design professionals, our intent is to support that process through our parallel volunteer efforts.

But as we step back from the immediate shock and imperative response to emergency conditions, we must recognize that much of the problem lies in our own culpability as a client society—the way we have helped over the years to create a susceptible built environment:

- Land-use patterns that encourage fragile dwelling units and critical facilities in the most vulnerable locations;
- Transportation and utility systems that fail more and more frequently in the face of natural events;
- Storm water management and development policies that increase rather than decrease the impact of runoff;
- Existing buildings that are barriers to sustainability—and that, in NYC, use 94% of electrical production and produce 75% of greenhouse gas emissions.

Overall, sea levels are rising and extreme storm events are becoming more frequent, both because of natural cycles and the worsening impact of human induced climate change. By building back better and smarter—moderating our past poor decisions through careful planning, becoming more energy-independent, and setting in motion new, sustainable design and construction practices—we can begin to mitigate or reverse the effects of centuries of misguided development policies.

The Post-Sandy Initiative

The Post-Sandy Initiative, the collaboration that produced this summary report, is structured as the planning and design community's response to this challenge. Initiated by the American Institute of Architects New York (AIANY) in the weeks that followed the storm and in collaboration with a wide range of other professional organizations and concerned individuals, it has been supported by the participation of a variety of local, regional, state, and national public agency participants. At publication time, still only months after Sandy swept through our region, this report is a slice in time of our efforts as of April 2013—a definition of issues, an analysis of options and opportunities, and the establishment of a framework for next steps. As our community continues to explore these issues and develop ideas for building better and building smarter, progress reports will be issued online at www.postsandyinitiative.org

As part of this Initiative, many professionals have given their time to explore important issues about Sandy and the response to date, both in terms of shorter-term recovery efforts and longer-term resiliency considerations. It is clear that we can, and need to, do better in the face of future extreme weather events.

CRITICAL & COMMERCIAL BUILDINGS

The challenges of adapting the vast inventory of existing critical buildings to withstand the effects of extreme climate events are

distinct from the relatively easier task of designing new structures for resiliency.

With substantial parts of the New York City metro area's power grid down and with Superstorm Sandy's floodwaters disabling emergency power, at least 4 major NYC hospitals (Bellevue, Coney Island, Manhattan VA, and NYU Langone) were forced to evacuate all patients and to completely shut down. Coler at the north end of Roosevelt Island transferred some patients to its sister Goldwater at the south. The same level of vulnerability took down four major data centers supporting the telecommunications networks in Lower Manhattan. A police station was abandoned when it flooded and a wall collapsed. In Brooklyn and Queens, 29 nursing homes were severely damaged; despite receiving instructions to shelter their populations in place, they were unprepared to endure the storm and its desolating aftermath. Individual buildings, as well as city- and region wide systems, were also unready. They still are.

Building owners have a four-fold responsibility when climate-driven disasters strike:

- Protecting occupants and users from death, injury, and suffering;
- Avoiding the evacuation of occupants if possible;
- Protecting buildings and their contents from damage;
- Ensuring that buildings can operate during and after the event.

Current building technologies offer the ability to construct new buildings and retrofit existing ones to better withstand the anticipated impacts of climate change. However, the challenges of adapting the vast inventory of existing buildings to those standards are distinct from the relatively easier task of designing new structures for resiliency. There exists a vast body of technical standards that can be put in place, or adapted for the local situation as it is coming to be understood. But a sobering aspect of the new paradigm is the rapid increase in dangerous conditions, such as rising sea levels and more powerful storms, as well as the ever-deepening science of the likely effects of climate change. Building standards and disaster planning will need to be revisited and updated frequently.

The Critical & Commercial Buildings Working Group consisted of 18 professionals, representing the main disciplines of the design profession including architects, planners, mechanical engineers, structural engineers, and hospital administrators. The group conducted six evening workshops over the course of two months. The Working Group incorporated five sub-groups: Vulnerability Assessment, Structural/Façade, Building Infrastructure, Operational Planning, and Implementation. Each sub-group produced a report on its assigned topic, which was incorporated into the final report.

KEY CONCEPTS AND FINDINGS

Owners of all commercial and institutional buildings—existing, in construction or planned—can begin now on a four-part process to meet their responsibilities in response to climate disasters. Owners should:

- Conduct vulnerability assessments of their buildings in anticipation of the likely effects of extreme climate events;
- Identify the specific technical standards their buildings must meet, and the technologies and products available to do so;
- Update operational plans to keep their buildings working during disasters, and to quickly recover functionality afterwards;
- Create implementation plans to put in place the remedial actions indicated by the three preceding steps.

Assessing Vulnerability

First, the specific impacts buildings might experience during climate-driven disasters should be determined. The potential effects on a given location can be inferred from published flood-zone and wind maps, as well as historical and modeled future weather data. As noted in the Introduction, however, the increasing severity of recent and anticipated climate events reveals much existing data to be inadequate, and highlights an urgent need to update and reach consensus on such standards.

Second, the critical roles of specific buildings should be established. A building, or a portion of one, should be considered a critical facility if it is required to withstand the effects of a disaster and remain in operation, whether to safeguard the activity conducted within it, or the lives and wellbeing of its occupants, other disaster victims, or emergency-services personnel. Critical facilities include, for example, hospitals, police and fire stations, data centers, evacuation shelters, and buildings or portions of buildings that provide essential support to them. Other vulnerable buildings should be required to withstand a climate disaster without failure of structural components, including façade elements, though they need not remain functioning and are likely to be evacuated during the disaster; these should be considered protected facilities rather than critical.

Third, survey building systems. Essential building systems comprise the design features, technologies, and equipment necessary to support continued operations. For critical facilities, for example, these include emergency power systems, water and ventilation systems, vertical transportation systems, and food storage and preparation facilities. For critical facilities, the survey should assess the ability of essential building systems to continue functioning during a disaster. For protected facilities, the survey should evaluate the ability of the building structure and façade to survive intact.

Meeting Updated Technical Standards

Two building components—structure/facades and internal systems—are key to resisting climate-driven threats whether from flooding, wind, snow, or extreme temperatures. Simply put, the goal is to assure that a building's physical structure remains intact and relatively undamaged by the forces of a disaster, especially the structural system and the building envelope, including fenestration.

Façade and structure: Current New York City and State codes specifying design requirements for snow resistance and flood resistance do not require changes. For wind load design, however, requirements should be upgraded to ASCE/SEI 7-10; this code provides ultimate wind speed values and introduces maps that incorporate the risk categories. For example, for Occupancy Category III and IV buildings, which include those posing a substantial hazard to human life in the event of failure, such as schools, hospitals, and critical facilities as defined above, this code

requirement corresponds to wind speeds with only a 3% probability of being exceeded in 50 years.

Systems: We studied a range of building system and utility issues, including the vulnerability points of electricity, IT, gas, water, and steam services as they enter a building; the location and protection of mechanical equipment; emergency equipment to provide for and back up supplies of water and power; fire alarm and firefighting systems; and elevators. We reviewed these in the context of three facility types—commercial and institutional; healthcare; and other mission-critical buildings—and for both new and existing structures. Examples of options for making these systems more resilient are shown here.

In general, a new critical building must meet higher performance standards than a commercial building, since its services are to be available before, during, and after a climate-driven event; new critical buildings should comply fully with new standards. Existing buildings demand more flexibility in determining the best corrective action. A realistic approach for an existing building is generally a best-practice standard, with some latitude in offering equivalent solutions. In some cases for existing buildings, even those deemed critical in function, evacuation may be the only feasible action to permit compliance.

Developing Operational Plans

While many New York City-area agencies and institutions have disaster plans in place, in general these need to be updated to reflect the increased risks our region is now understood to face. Moreover, disaster planning should always consider buildings and their particular vulnerabilities and requirements.

Before An Event

Not all disasters can be foreseen, but for some—in particular, weather events—there may be substantial warning and the ability to anticipate specific effects like flooding. Building owners' advance operational plans should address a range of issues, including the evacuation and relocation of occupants, building shutdowns, and the possible extended relocation of occupants afterwards. For critical facilities, emergency equipment and supplies should be accommodated, temporary relocations should be envisioned, and advance arrangements should be made with the NYC Office of Emergency Management for disaster zone access for essential personnel.

During An Event

Planning should consider the provision of security for evacuated buildings; in Class E high-rise buildings, the risk of a fire-detection system failure requires particular attention. Hospitals by definition are both especially vulnerable and uniquely essential during disasters, and disaster planning for them creates distinct obligations. For example, hospitals should plan for surge capacity for emergency and inpatient departments, the capability to house and feed stranded staff, and provisions for "passive operational survivability," such as natural ventilation during power failures and electric generation capabilities independent of the City's grid.

After An Event

Plans for continuing or resuming operations in the wake of a disaster should consider that normal transportation and supply routes will most likely be disrupted. Therefore, back-up supplies and the on-site storage capacity for them are necessary. Emergency supply agreements made in advance with vendors may be advisable. Portable emergency trailers housing heating or electrical generators, water or oxygen supply, and sewage or waste containment may need to be accommodated as well.

Clean-up and decontamination may require, for example, pre-negotiated arrangements with specialized contractors or vendors for mold removal, fuel or sewage overflows, debris removal, disposal of floodwater and the like, and environmental waivers for removing contaminated water and debris to disposal points. Restoration of normal operations may require post-storm inspections of floor and façade walls; testing and remediation of mechanical, electrical, plumbing, and communications systems; drying out of flooded areas; prioritizing of repairs and/or demolition; and even a strategy for abandonment or managed retreat, if a facility is found to be damaged beyond repair.

Implementing a Plan

Determining a Building's Risks, Strengths, and Weaknesses

Conducting a vulnerability assessment of a building and evaluating it against updated technical standards will indicate what must be done to make it disaster ready. This process will also illuminate relative priorities among the risks a building faces and the available solutions, and create a sense of sequence for how to proceed.

Calculating Available Resources

Implementation of a plan requires evaluating both capital and human resources. Capital resources could be funds from internal sources, such as operating budgets and borrowing; or from external sources, such as grants, tax incentives, and philanthropy. Human resources include the personnel who will be expected to follow the operational procedures developed for withstanding and recovering from an extreme event. They also include a building's stakeholders who may be potential allies or opponents in preparedness planning.

Reconciling Needs and Resources

Arriving at a realistic plan will mean reconciling needs with resources. Typically, needs outstrip resources, so that strategic trade-offs and deferments are necessary. These can be arrived at by:

- Developing a detailed plan;
- Conducting cost-benefit analyses of its elements;
- Determining a timeframe and budget;
- Assembling a team responsible for implementation.

Keeping On Track

- A progress-monitoring system, and honest assessments of progress, should be part of establishing a building's preparedness.
- Deviations from a plan must be corrected.
- Standards may change, our understanding of the risks may change, and available funding may change, so periodic re-examination and re-calibration will be necessary. Intervals of four and eight years are realistic to stay up to date.

POLICY CONSIDERATIONS AND REGUL ATORY IMPLICATIONS

Because vulnerability assessments are the necessary first step in making buildings resilient, and because no obstacles exist to

undertaking them immediately, the City Council should enact a law requiring building owners to conduct vulnerability assessments of their properties. A great number of specific changes to current zoning and building codes will be called for if the City and its buildings are to withstand repeated climate-driven and other disasters. In general, these include:

- An updated building code mandating a more robust disaster resistance capability for all new buildings.
- Hardening and retrofitting of existing buildings deemed vulnerable. This will be expensive, and in some cases impossible. The building code should provide a mechanism for permitting non-compliance; in such cases, an alternative strategy of evacuation should be required. Critical-function buildings in vulnerable locations must have a plan for Transfer of Service to a protected alternate facility, and these alternate facilities should be required to have the additional capacity and equipment to accommodate such a transfer.
- Zoning for land-uses should appropriately align with new and updated knowledge of flood zones and other risks, which may mean downzoning in some areas; and revisions to zoning and density limits for other areas that may in the future be required to absorb growth previously destined for flood zones and vulnerable waterfronts.

OPPORTUNITIES AND NEXT STEPS

Long Term

Innovation in the development of disaster-resistant building design strategies, technologies, and materials is essential. Where applicable, such innovations that already exist or are being implemented in other countries where resiliency planning is more advanced should be adopted or adapted. New York City's particular vulnerabilities call for:

- Policies that move toward elimination of non-compliant existing buildings that cannot be hardened, and their replacement—with an exception path for buildings deemed of significant historic or cultural value.

- Regional protective systems that enhance, or eliminate the need for, individual building responses. These should involve making utility, data, and security networks redundant and resilient, and finding regional strategies for maintaining essential services and supplies, such as public transport, food, and fuel, during disasters. In particular, regional networks for maintaining essential healthcare services must be established.

Medium Term

Numerous scientific, governmental, and professional organizations and collaborative are exploring the potential impacts of climate change on natural and built environments; these include the Federal Emergency Management Agency, the National Academy of Sciences, the National Oceanic and Atmospheric Administration, the U.S. Conference of Mayors, C40 Cities Climate Leadership Group, and many others. The specific challenges that extreme climate events pose for buildings, cities, and in particular for densely populated areas, illuminated by our experience of Sandy and explored by this and other initiatives in the storm's aftermath, must be brought to the attention of these research bodies. The goals should include:

- Better simulation models of water and wind behavior on built structures;
- New national reference code for building construction;
- Zoning and planning approaches that bring patterns of development into line with present and emerging knowledge of disaster-prone areas.

Short Term

Advisory bodies have been established at the City and state levels, and among professional associations, to develop recommendations for changes to codes and zoning, façade and structural systems, building systems, and operational requirements. Similar groups focused on disaster-response planning will also have recommendations relevantto the design and operation of buildings. Their valuable findings will need to be aligned and reconciled. In the meantime, building owners should begin assessment programs to determine their risks; undertake voluntary upgrades to their properties; and update operational plans for disaster events.

A collaborative, integrated design approach to assessing and upgrading critical and commercial buildings will enable these important facilities to remain in operation when we most need them.

Appendix G: Urban Green Recommendations

URBAN GREEN REPORT
New York City's leading advocate for urban sustainability

Urban Green Council is the New York Chapter of the U.S. Green Building Council (USGBC). Their mission is to lead in advancing the sustainability of urban buildings through education, advocacy and research.

A non-profit organization established in 2001, Urban Green is funded by contributions from foundations, its 900+ members, and over 40 corporate sponsors. Our in-house experts and a dedicated network of volunteers are helping to transform the built environment in New York City with models that can be replicated in urban centers nationwide.

Urban Green provides a wide range of educational and networking events for our members and the green building community at large; conducts research; and advocates for change that will make cities more sustainable. Our website and newsletter (circ. 6,500+) reach an audience comprised mostly of professionals working in architecture, engineering, design, construction, real estate development and management, product development and manufacturing, government, and other related fields.

1 Prevent Storm Damage to Homes

Issue:
Flooding, precipitation, high winds, storm surge, wave action, and wind-/water-borne debris can damage homes. Much of this damage can be prevented with targeted design and construction measures.

Recommendation:
Require new and replacement windows to be wind-resistant. Recommend anchoring framing to foundations and strengthening foundations and basements in existing homes. Develop custom requirements for attached homes that present unique challenges.

2 Launch a Design Competition for Raised Homes

Issue:
New York City has 71,000 buildings located in the new 100-year flood zone. New buildings in these areas will have to build above the flood line, and other homeowners may decide to voluntarily raise their homes. This will impact the city□s architecture, streetscapes, and accessibility.

Recommendation:
Launch a competition to design a streetscape of attractive raised homes that fit the character and aesthetic of existing neighborhoods and remain accessible to people with disabilities. The competition should address both detached and attached homes.

3 Relocate & Protect Building Systems

Issue:
The first and lower floors of many existing buildings are at risk because they are below flood level, and essential building equipment is often located on these lower floors.

Recommendations:
Building owners should consider relocating equipment above the flood level and follow best practices when flood-proofing. Require fire protection equipment to be raised in new construction and enhance standards for hospitals.

4 Remove Barriers to Elevating Buildings & Building Systems

Issue:
Building owners may wish to elevate buildings or building systems, but are restricted by building regulations and zoning height limitations.

Recommendation:
Allow building owners to raise telecommunications rooms and to store more fuel above the flood line. Consider allowing zoning relief for buildings elevating to the 500-year flood line.

5 Remove Barriers to Sidewalk Flood Protection

Issue:
Building owners may wish to install flood barriers on sidewalks, but are deterred by codes that limit sidewalk use and that assume buildings are fully occupied during floods.

Recommendation:
Allow underground sidewalk attachments for temporary flood barriers. After evacuation, allow nonresidential buildings to maintain a single entrance/exit for emergency personnel so that flood barriers can be installed.

6 Add Backup Fire Safety Communication

Issue:
Loss of power to telecommunications systems and flooding that damages underground phone and data lines can cut off communication between buildings and the Fire Department.

Recommendation:
All large buildings in flood zones should consider having a backup wireless fire communication system, and new large critical buildings must have backup phone and data connections. Mandate the use of storage batteries with a life of at least eight hours to serve buildings□ fire and life safety communication systems.

7 Safeguard Toxic Materials Stored in Flood Zones

Issue:
The NYC Department of Environmental Protection requires facilities that store hazardous chemicals to file a risk management plan, but it does not require special protection for chemicals stored in flood zones.

Recommendation: Require toxic materials in flood zones to be stored in a flood-proof area.

8 Prevent Sewage Backflow

Issue:
During floods, sewage can backflow into buildings.

Recommendation:
Require valves on building sewage lines to prevent sewage from entering the building.

9 Plant Wind and Flood Resistant Trees

Issue:
People, property, buildings, and utility lines can be at risk from trees damaged by high winds and flooding.

Recommendation:
In waterfront areas accessible to the public, require wind and salt-tolerant trees and regular tree pruning. Encourage private owners to follow the same practices.

10 Clarify Construction Requirements in Flood Zones

Issue:
City regulations for new construction and substantial renovations provide for resiliency in flood zones. However, the requirements are not always clear to design professionals and contractors.

Recommendation:
Clarify flood zone construction requirements in code and through a Department of Buildings Bulletin. Allow more flexibility in requirements for enclosures below the flood line.

11 Prevent Wind Damage to Existing Buildings

Issue:
High winds can cause walls, windows, doors, and building equipment to come loose. Loose stones on rooftops can become small missiles. While new buildings must meet strong wind standards, new installations on existing buildings do not.

Recommendation:
Require that equipment and structures added to existing buildings meet the same wind standards in effect for installations on new buildings. Require heavy pavers on rooftops and impact-resistant windows in high wind zones.

12 Analyze Wind Risks

Issue:
New York City is in a hurricane-prone region and our building code incorporates modern standards for wind design. However, most NYC buildings were constructed under older codes that did not include the same level of protection. In addition, buildings under construction and climate change impacts are not fully addressed in the new codes.

Recommendations:
Analyze wind effects on existing buildings and those with particular wind vulnerability, such as homes raised on columns and buildings under construction. Study how climate change may affect wind speeds. Recommend changes to code and construction practices to address any vulnerabilities identified.

13 Capture Storm Water to Prevent Flooding

Issue:
Storms can cause localized flash flooding of buildings and streets. The city applies rigorous Storm water standards to buildings that add new sewer connections, but storm water from existing buildings must still be addressed.

Recommendation:
Design sidewalks to capture storm water and continue supporting the NYC Green Infrastructure
Plan.

14 Use Cool Surfaces to Reduce Summer Heat

Issue:
Light-colored roofs and surfaces reflect light and heat back into the atmosphere, cooling buildings and cities. City regulations mandate light-colored roof coatings, but only for flat roofs. These coatings also tend to darken over time, losing their effectiveness. Dark, non-compliant coatings are still sold in NYC, increasing unintentional violation of code.

Recommendations:
Expand existing cool roof requirements to include pitched roofs. Prohibit the sale of dark roofing materials and dark “crumb” rubber in synthetic playing fields. Encourage owners to use self-cleaning cool roof coatings and study the longevity of various cool roof options.

15 Choose Reliable Backup Power & Prioritize Needs

Issue:
Few backup power systems are large enough to serve a whole building, forcing most buildings to make difficult choices about what equipment to back up.

Recommendation:
Prioritize which electrical equipment will run on backup power so buildings can remain habitable during extended blackouts. Because cogeneration and solar power systems are always in use, they can be more reliable than generators that are only turned on during emergencies.

16 Use Cogeneration & Solar During Blackouts

Issue:
Many cogeneration and solar power systems are not set up to run during a blackout. Because of this, they cannot provide heat and power to buildings during these emergencies.

Recommendation:
Cogeneration and solar power systems should be designed to run during blackouts.

17 Remove Barriers to Backup & Natural Gas Generators

Issue:
Existing regulations require buildings that voluntarily provide backup, standby generators to supply backup power for at least one elevator in addition to whatever other loads the buildings may want to power. This increases generator size and costs, making backup generators too expensive for some buildings. Other regulations discourage natural gas generators, which are clean burning and can power buildings for extended periods without fuel deliveries.

Recommendation:
Only require buildings over 75 feet to power an elevator with the standby generator, and reduce the minimum requirements for generator size. For emergency generators, increase the allowed startup delay from 10 to 60 seconds, making more options available for generators operated by
natural gas.

18 Remove Barriers to Cogeneration

Issue:
Onsite cogeneration can be an efficient and cost effective source of heat and power to buildings, but technical and regulatory barriers inhibit its use.

Recommendation:
Con Edison should help facilitate the installation of larger systems by preparing guidelines similar to those for smaller systems, and implement a plan for significant expansion of cogeneration. Cogeneration should be properly sized to maximize economic benefit and energy
efficiency.

19 Remove Barriers to Solar Energy

Issue:
Onsite solar power can keep buildings habitable during blackouts, but technical, regulatory, and economic barriers inhibit its use.

Recommendation:
Con Edison, NYSERDA, and other government agencies should continue working together to streamline permitting processes, reduce barriers in project schedules, and increase the allowable roof area for solar power.

20 Add Hookups for Temporary Generators & Boilers

Issue:
Buildings with extended service disruptions can use electricity and heat from temporary emergency generators and boilers. It is much easier to connect this equipment if convenient hookup points are installed in advance.

Recommendations:
Require some existing health care facilities to install external electrical hookups. Recommend these installations as best practice for other buildings, and recommend external hookups for heating and cooling as well.

21 Keep Residential Stairwells & Hallways Lit During Blackouts

Issue:
All buildings are required to have 90 minutes of emergency lighting so they can be safely evacuated. However, during a prolonged blackout, residents in multifamily buildings need lighting in hallways and stairwells throughout the duration of the event.

Recommendation:
Require most new multifamily buildings to provide lighting in hallways and stairwells during extended blackouts; require the same of existing multifamily buildings within two years.

22 Keep Gas Stations Open During Blackouts

Issue:
During blackouts, most service stations are unable to sell gas because the pumps rely on electricity. In the days following Superstorm Sandy, about half of NYC's service stations were not operational, delaying recovery efforts and disrupting work and life for hundreds of thousands of residents and businesses.

Recommendation:
Unless New York State passes an equivalent law, NYC should require all fuel stations to either have a backup generator or be "generator ready."

23 Supply Drinking Water Without Power

Issue:
During a power failure, residential buildings using electric pumps lose their supply of potable water. Water may be present below the sixth floor, but in some cases remains unavailable if a non-operating pump blocks the water supply.

Recommendation:
Require residential buildings to provide drinking water to a common area, supplied directly through pressure in the public water main.

24 Ensure Toilets & Sinks Work Without Power

Issue:
Some toilets and faucets need electricity to function. This presents a sanitation risk during an extended power outage.

Recommendation:
Require that toilets and faucets be capable of operating without grid power.

25 Enhance Building Water Reserves

Issue:
Water towers can provide potable water during power losses. City regulations no longer require water towers for new construction and they allow towers to be removed from existing buildings.

Recommendation:
Encourage building owners to maintain existing water towers and consider using water towers in new construction.

26 Ensure Operable Windows in Residential Buildings

Issue:
Operable windows permit cooling without power, which allows buildings to remain habitable during power outages and saves energy. New windows are often installed with stops that prevent them from opening more than 4.5 inches, reducing their cooling potential.

Recommendation:
Extend the mandate of the Task Force through Fall 2013 to recommend options for regulating windows that address both child safety and the overheating during blackouts.

27 Maintain Habitable Temperatures Without Power

Issue:
Utility failures often disable heating and cooling systems, leaving interior building temperatures dependent on whatever protection is

provided by the insulation and air sealing of a building's walls, windows, and roof.

Recommendation:
Extend the mandate of the Task Force through Fall 2013 to develop a multi-year strategy for ensuring that new and existing buildings maintain habitable temperatures during utility failures. Clarify requirements for tightly sealing new windows and doors and upgrading roof insulation during roof replacement.

28 Create Emergency Plans

Issue:
The multiday loss of power and extreme flooding from Superstorm Sandy exceeded most planning scenarios. As a result, few buildings or residents had plans to manage such emergencies.

Recommendation:
The city should work with industry experts to develop emergency preparedness information and instructions for apartment residents and homeowners including model emergency operating procedures and a building contact directory.

29 Adopt an Existing Building Code

Issue:
Existing building renovations are governed by a complex mix of new and old codes. This complexity discourages upgrades that would improve resiliency, particularly during time-sensitive recovery periods.

Recommendation:
The Task Force supports the Department of Buildings plans to adopt an Existing Building Code, which will simplify regulation of building upgrades and streamline permitting for resiliency improvements. The new code or other regulations should include specific provisions for post-disaster reconstruction.

30 Don't Discourage Buildings From Operating During Emergencies

Issue:
Buildings need to remain open during many emergencies, but makeshift services that don't meet code standards during normal operations can be a liability risk. Buildings also need clarity about enforcement of various regulations during an emergency, such as those governing heat
and stairwell lighting.

Recommendations:
New York State should adopt legislation that limits the liability of building owners and their staff during emergency conditions. The city should inform owners and tenants how enforcement of regulations may be relaxed during emergencies.

31 Support Good Samaritan Legislation

Issue:
Architects and engineers often hesitate to volunteer with emergency recovery efforts due to liability concerns.

Recommendations:
Enact New York State "Good Samaritan" legislation protecting architects and engineers from liability for emergency volunteer work.

32 Preapprove Emergency Inspectors

Issue:
The Department of Buildings has procedures to mobilize large numbers of public and private sector inspectors trained for post-disaster building assessments. There are opportunities to speed implementation and enhance capabilities by formalizing this program.

Recommendation:
The Department of Buildings should formalize its practices by creating a Preapproved Emergency Inspector Program through its "special inspector" program to assist the city during emergencies.

33 Pre-negotiate Emergency Recovery Agreements

Issue:
Finding service providers and negotiating agreements can delay recovery for damaged buildings.

Recommendation:
As part of emergency planning, building owners and managers should identify service providers and pre-negotiate emergency recovery agreements, reducing the economic and human impact of an emergency.

Appendix H: Healthcare Facilities in Affected by the Construction Moratorium

Hospitals in NYC	Bed Capacity	Evac. Zone	Old Evac. Zone
Bellevue Hospital Center	912	1	B
NYU Hospitals Center	879	1	A
St Johns Episcopal Hospital So Shore	257	1	A
Staten Island University Hosp-North	508	2	A
Coney Island Hospital	371	2	A
Metropolitan Hospital Center	338	2	B
Calvary Hospital Inc	225	2	C
Coler-Goldwater Specialty Hospital & Nursing Facility - Coler Hospital Site	210	2	B
The Heart Institute	0	2	A
Coler-Goldwater Spec Hosp&Nurs Fac - Goldwater Hospital Site	417	3	B
New York Presbyterian Hospital - New York Weill Cornell Center	850	4	N/A
Lincoln Medical & Mental Health Center	347	4	C
Harlem Hospital Center	286	4	C
Hospital for Special Surgery	205	4	C
NYU Hospital for Joint Diseases	190	4	C
Rockefeller University Hospital	40	4	N/A
Beth Israel Medical Center/Petrie Campus	856	5	C
Brookdale Hospital Medical Center	530	5	C
Lutheran Medical Center	450	5	C
Woodhull Medical & Mental Health Center	394	5	C
Beth Israel Medical Center/Beth Israel Brooklyn	212	5	N/A
Staten Island University Hosp-South	206	5	A
New York Downtown Hospital	180	5	C
New York Community Hospital of Brooklyn, Inc	134	5	C
Montefiore Med Center - Jack D Weiler Hosp of A Einstein College Div	403	6	N/A
NY Eye and Ear Infirmary	69	6	N/A

Nursing Homes in NYC	Bed Capacity	Evac. Zone	Old Evac. Zone
Shorefront Jewish Geriatric Center	360	1	A
Sea-Crest Health Care Center	320	1	A
Menorah Home & Hospital for Aged & Infirm	320	1	A
Shoreview Nursing Home	320	1	A
Brookhaven Rehabilitation & Health Care Center LLC	298	1	A
Resort Nursing Home	280	1	A
Horizon Care Center	280	1	A
Neponsit Health Care Center	269	1	A
Haven Manor Health Care Center,LLC	240	1	A
Promenade Rehabilitation and Health Care Center	240	1	A
Rockaway Care Center	228	1	A
West Lawrence Care Center, LLC	215	1	A
Saints Joachim & Anne Nursing and Rehabilitation Center	200	1	A
Queens Nassau Rehabilitation and Nursing Center	200	1	A
Lawrence Nursing Care Center, Inc	200	1	A
Peninsula Center for Extended Care and Rehabilitation	200	1	A
Sheepshead Nursing & Rehabilitation Center	200	1	B
Park Nursing Home	196	1	A
New Surfside Nursing Home, LLC	183	1	A
Bishop Charles Waldo Maclean Episcopal Nursing Home	163	1	A
Bezalel Rehabilitation and Nursing Center	120	1	A
Ocean Promenade Nursing Center	120	1	A
Oceanview Nursing & Rehabilitation Center, LLC	102	1	A
Far Rockaway Nursing Home	100	1	A
Providence Rest, Inc.	200	2	C
Keser Nursing and Rehabilitation Center, Inc.	200	2	B
Coler-Goldwater Spec Hosp&Nurs Fac Coler Nursing Facility Site	815	3	B
Coler-Goldwater Spec Hosp&Nurs Fac Goldwater Nursing Facility Site	574	3	B
River Manor Care Center	380	3	B
Four Seasons Nursing and Rehabilitation Center	270	3	C
Ruby Weston Manor	240	3	C
Crown Nursing & Rehab Center	189	3	B
Spring Creek Rehabilitation & Nursing Care Center	188	3	B
Brooklyn-Queens Nursing Home	140	3	B
Brooklyn United Methodist Church Home	120	3	C
Kings Harbor Multicare Center	720	4	C
Sephardic Nursing & Rehabilitation Center	271	4	B

Haym Solomon Home for the Aged	240	4	B
Rego Park Nursing Home	200	4	C
Greater Harlem Nursing Home Company Inc	200	4	B
Gold Crest Care Center	175	4	C
VillageCare Rehabilitation and Nursing Center	105	4	B
The Robert Mapplethorpe Residential Treatment Facility A.N.	28	4	C
Terence Cardinal Cooke Health Care Center	679	5	C
Cobble Hill Health Center, Inc	520	5	C
Bay Park Center for Nursing and Rehabilitation, LLC	480	5	C
Schulman and Schachne Institute for Nursing And Rehabilitation	448	5	C
Northern Manhattan Rehabilitation and Nursing Center	320	5	C
Cabrini Center for Nursing & Rehab	240	5	C
Grand Manor Nursing & Rehabilitation Center	240	5	C
Cliffside Rehabilitation & Residential Health Care Center	218	5	N/A
Rebekah Rehab and Extended Care Center	213	5	C
Throgs Neck Extended Care Facility	205	5	C
Park Terrace Care Center	200	5	C
Manhattanville Health Care Center	200	5	C
Bridge View Nursing Home	200	5	N/A
Bronx Center for Rehabilitation & Health Care	200	5	C
New Gouverneur Hospital SNF	156	5	C
New East Side Nursing Home	58	5	C
Jeanne Jugan Residence	30	5	C
Daughters of Jacob Nursing Home Company Inc	405	6	N/A
Atlantis Rehabilitation and Residential Health Care Facility	400	6	N/A
Hopkins Center for Rehabilitation and Healthcare	288	6	N/A
Union Plaza Care Center	280	6	N/A
NYS Veterans Home In NYC	250	6	C
Lutheran Augustana Center for Extended Care & Rehabilitation, Inc	240	6	C
Ditmas Park Care Center	200	6	C
Fairview Nursing Care Center Inc	200	6	N/A
St Vincent Depaul Residence	120	6	N/A
Highbridge-Woodycrest Center Inc	90	6	N/A

Appendix I: The AIANY Systems matrix with reference codes added

SYSTEMS MATRIX - HEALTH CARE FACILITIES AND RELEVANT UTILITY SYSTEMS

UTILITY SERVICES	RISK ASSESSED	TYPE	CRITICAL FACILITY	PROPOSED MEASURE	NEW	EXIST	CODES & ISSUES	AHJ	COST IMPACT
ELECTRIC									
High Voltage Electric	**Flood**	Hospitals & Medical Centers	**YES**	Protect underground ductbanks, vaults, wiring, transformers and exterior load banks	Req	Rec	National Electric Code (NEC), NFPA	Local Utilities-AHJ such as Con Ed/PSEG	High
Low Voltage Electric	**Flood**	All	**YES**	Locate electrical closets, etc above FEMA flood evaluation		Rec	NFPA, NEC and UL	NYS	Medium
Generators	**Flood**	All	**YES**	Elevate above FEMA flood plain	Req	Rec	NFPA and Type 1 EES	NYS	Medium
Telephone & Data	**Flood**	All	**YES**	Locate underground cables, services and equipment above flood plain elevation or protect with vaults that pump/drain water	Req	Rec	Local Phone Service or Computer Internet Provider	Verizon, ATT, Time Warner et al	Low
Emergency Lighting		All	**YES**	Extended battery life or generator	Req	Rec	NFPA	NY & Local	Low
HVAC Systems	**Flood**	All	**YES**	Controls and alarms on emergency circuits	Req	Rec	ASHRAE /NFPA		Low
Overhead Distribution Wiring, Poles and Transformers	**Wind**	All	**Site Specific**	Protect and evaluate fall zone	Req	Rec	NEC	Local Utilities-AHJ such as Con Ed/PSEG	High
All Critical Equipment (Life Support)	**Heat**	All	**YES**	Protect with ventilation and air conditioning; use natural ventilation to reduce extended energy uses	Req	Varies	NFPA 99	NYCCR 710	Medium
All Critical Equipment (Life Support)	**Flood**	All	**YES**	Provide protection with rooms that are waterproof or storage at elevation above FEMA flood elev	Req	Varies	Disconnect medical gases during emergencies/provide battery back up or dedicated generato	NYCCR 710	Medium

								rs		
MECHANICAL										
Boiler Rooms	**Flood**	as per design	**Site Specific**	Raise boilers and associated systems above flood level	Req	Varies	ASHRAE	NYS Mech Code	Medium	
Roof Top Units - Air Handling Units	**Wind**	as per design	**Site Specific**	Secure to roof and raise above flood level for flat roofs that pond water	Req	Varies	ASHRAE	NYS Mech Code	Medium	
Hot Water Systems	**Flood**	as per design	**Site Specific**	Raise all equipment in basement or low level to elevation above FEMA flood level	Req	Varies	ASHRAE	NYS Mech Code	Medium	
Chilled Water Systems	**Flood**	as per design	**Site Specific**	Raise all equipment in basement or low level to elevation above FEMA flood level	Req	Varies	ASHRAE	NYS Mech Code	Medium	
Cooling Towers	**Flood**	variable	**Site Specific**	Secure to roof and raise above flood level for flat roofs that pond water; Locate remote equipment above flood level	Req	Varies	ASHRAE	NYS Mech Code	Medium	
Ventilation Systems	**Flood**	All	**Yes**	Provide redundant systems to assure dangerous fumes, exhaust and gases will operate	Req	Rec	ASHRAE	NYS Mech Code	Medium	
Medical Gas Systems	**Flood**	Hospitals and Medical Centers	**Yes**	Secure bottles, cyclinder & gases above flood level and provide redundant systems as required	Req	Req	ASHRAE, NFPA & NYS	NYS Mech & Plumbing	Variable with qty.	
Bulk Gas Tanks	**Flood**	All	**Site Specific**	External systems to be located above flood level	Req	Req	NFPA	NYS Mech & Plumbing	Low/Medium	
Steam Service	**Flood**	variable	**Site Specific**	External piping to be located on piers above flood level; avoid buried piping without drainage provisions	Req	Rec	ASHRAE	NYS Mech & Plumbing	Variable with size	
FIRE PROTECTION										

Fire Pump	**Flood**	as per design	**Site Specific**	Raise all equipment in basement or low level to elevation above FEMA flood level	Req	Req	NFPA	NYS & Local	Medium
Sprinkler Systems	**Flood**	All	**Site Specific**	Raise all equipment in basement or low level to elevation above FEMA flood level	Req	Req	NFPA 13	NYS & Local	Variable with size
Sprinkler Systems	**Heat**	All	**Site Specific**	Replace low temperature sprinkler heads with higher temparature type or provide redundant systems	Req	Req	NFPA 13 & Local Fire Authorities	NYS & Local	Medium
PLUMBING									
Gas Service	**Flood**	as per design	**Site Specific**	Eliminate breech of piping & access to valves, meters and PRV stations	Req	Req	NFPA Gas Code	Local Gas Supplier	Low
Domestic Water	**Flood**	All	**YES**	Isolate piping below grade to assure watertight (double wall piping with drainage); raise all piping and valves above flood level	Req	Req	ASCE/NYS DOH	Local	Medium-High
Sump Pumps & Ejectors	**Flood**	All	**Site Specific**	Size systems for flood events with reducndant pumps	Req	Rec	NYS Building Code	NYS & Local	Low
Sanitary Waste System	**Flood**	All	**YES**	Include backwater valves and adequate separation from combined systems. Separate storm drainage system	Req	Req	NYS Plumbing Code	Local inc. County, City or Town	Low-Medium
Storm Water Systems	**Flood**	**ALL**	**Site Specific ALL**	**Evaluate & mitigate ALL potential flooding issues from site, buildings and adjacent areas**	**REQ**	**REQ**	**Federal ACOE, FEMA, IBC, NYS & Local. Also see MSKCC Report by JBB dated 4/15/13**	**NYS, Local and County**	**Variable depending on size**
OTHER									
Elevators & Conveyance Equipment	**Flood**	All	**YES**	Provide sumps and drainage provisions for excessive flooding of shafts per code	Req	Rec	NYS Building Code (Architect to Review)	NYS & Local	Variable

Appendix X: Resources

Resources

A Stronger and More Resilient New York, Mayor Michael R. Bloomberg Special Initiative for Rebuilding and Resiliency (SIRR), June 2013

http://www.nyc.gov/html/sirr/html/report/report.shtml

FEMA: Publication 577; Risk Management Series: Design Guide for Improving Hospital Safety in Earthquakes, Floods, and High Winds Providing Protection to People and Buildings, June 2007

http://www.fema.gov/media-library/assets/documents/8811?id=2441

Post-Sandy Initiative: Building Better, Building Smarter. Opportunities for Design and Development, American Institute of Architects New York (AIANY), Design for Risk and Reconstruction Committee (DfRR), May 2013

http://postsandyinitiative.org/wp-content/uploads/2013/05/Post-Sandy-Report_Full.pdf

NYSDOH: Healthcare findings briefing, June 2013

Urban Green, Building Resiliency Task Force Report, June 2013

http://www.urbangreencouncil.org/BuildingResiliency

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

September 12, 2013

Continuing Care Retirement Community - Construction **Exhibit # 2**

1.	131304 C	Peconic Landing at Southold (Suffolk County)

Public Health and Health Planning Council

Project #131304-C
Peconic Landing at Southold

County: **Suffolk County** ***Program:*** **Continuing Care Retirement Community**
Purpose: **Construction** ***Submitted:*** **May 31, 2013**

Executive Summary

Description
Peconic Landing at Southold, Inc., an existing not-for-profit continuing care retirement community (CCRC) with 250 independent living units, 26 enriched housing units and a 44-bed skilled nursing facility, requests approval for the certification of 16 additional skilled nursing beds, for a total of 60 beds. Additionally, although not part of this application, Peconic Landing is planning the expansion of 40 apartments and 16 special needs assisted living residence beds.

The applicant has indicated they need the additional 16 RHCF beds due for the following reasons;
* Outside skilled nursing facility (SNF) placement of contract holders is occurring because the on-site SNF is at full capacity. This causes resident dissatisfaction, and Peconic Landing is contractually obligated to pay for outside SNF placements.
* The addition of 40 apartments and 16 special needs assisted living apartments will add to SNF demand.
* Increasing age and morbidity of residents now in independent living are adding to SNF demand.
* The facility lost approximately $309,000 in Medicare rehabilitation services due to the SNF being at capacity.
* The initial licensure/construction of the SNF was at a 5.7 to 1 ratio (independent living to SNF) instead of the normal 4:1 ratio for CCRCs. The addition of 16 beds will bring the Peconic Landing to SNF ratio to 4.8:1.

DOH Recommendation
Contingent Approval

Need Summary
Because RHCF beds allocated to the CCRCs are exempt from the RHCF bed need methodology (Section 709.3), there will be no need recommendation for this application

Program Summary
The addition of 16 nursing home beds at Peconic Landing will allow the CCRC to better meet their contractual obligations to the residents of the community. The design of the 17 bed nursing unit demonstrates sensitivity to the needs of the residents, and embraces contemporary principles of nursing care. The location of the existing nursing home and proposed nursing home expansion are outside the 500-year flood plain and therefore not subject to potential flooding.

Financial Summary
The total project cost of $7,538,000 will be as follows: Equity of $3,050,000 and a bank loan of $4,488,000 at an interest rate of 6.50% for a 30 year term.

Incremental Budget:

Revenues	$ 510,560
Expenses	$ 2,199,638
Excess of Revenues over Expenses	($ 1,689,078)

The losses will be offset by the positive cash flow of the operations.

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

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

Approval conditional upon:

1. Submission of updated equipment costs via revised/coordinated Schedules 8B &11 acceptable to the Department of Health. [BFA]
2. Reimbursement for this project shall be limited to $5,984,000 (plus CON fees) based upon the RHCF Bed Caps. [BFA]
3. 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]
4. The applicant shall complete construction by September 30, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
5. Signage should be installed to direct visitors and service personnel to use the main entrance of the nursing home instead of the entrance to the special needs assisted living residence. [LTC]
6. An Article 46 Certificate of Authority application must be completed and approved concurrently with the approval of this project. [LTC]
7. The effective date for the certification of the additional beds will be determined by the MARO-Long Island. [LTC]

Council Action Date

October 3, 2013.

Programmatic Analysis

Facility Information

	EXISTING	PROPOSED
FACILITY NAME	Peconic Landing at Southold	Same
ADDRESS	1500 Brecknock Road Greenport, NY. 11944	Same
RHCF CAPACITY	44	60
ADHC PROGRAM CAPACITY	0	Same
TYPE OF OPERATOR	Voluntary	Same
CLASS OF OPERATOR	Corporation	Same
OPERATOR	Peconic Landing at Southold Inc.	Same

Program Review

Peconic Landing at Southold (Peconic Landing) is a Continuing Care Retirement Community (CCRC) located on the north fork of Long Island that currently contains 250 independent living units, 26 enriched housing units, and 44 RHCF beds. According to the applicant, the demand for nursing home level of care within the CCRC now outstrips supply, which necessitates outside placement of the CCRC contract holders. The placement of these residents in nursing homes outside the CCRC is both unpopular with contract holders and expensive for the company. To meet this demand, Peconic Landing proposes to certify an additional 16 RHCF beds.

The CCRC is authorized to operate under an Article 46 Certificate of Authority. This application to add Article 28 RHCF beds is part of a larger Article 46 application to expand the community to add 40 additional independent living units and 16 special needs assisted living residence beds. Peconic Landing is required under its CCRC contract to provide residents with skilled nursing services and consequently needs to maintain approximately a 4:1 ratio of independent living units to skilled nursing beds.

Under a policy established in 2009, CCRCs are subject to restrictions for outside admissions to the existing skilled nursing facility portion of the CCRC after seven years of operation. Peconic Landing is currently beyond the seven year period and therefore is subject to a 20% restriction on outside admissions in calendar year 2014 and a 10% restriction in calendar year 2016 and subsequent years.

Physical Environment

Peconic Landing proposes to add 16 RHCF beds in a new 17 bed addition to the existing long term care building. The extra bedroom in the new unit will replace an existing bedroom, which will be displaced by the connector to the existing building.

The nursing unit will contain 100% single resident rooms with a private bathroom and shower. The nursing unit surrounds a “great room” with fireplace and an adjoining dining/activity area. The central area will also include a full function spa room, which will double as a beauty salon, and a bathing suite with whirlpool tub. The new addition will be surrounded by gardens, and a porch will offer additional outdoor space. The new unit will offer a generally contemporary residential environment. The kitchen area in the unit allows for the preparation of small meals, sandwiches, and snacks 24 hours a day. The main meals will be prepared in a remote central kitchen and brought to the unit in hot carts. There will also be a laundry room for personal use as well as a new rehabilitation area to serve the resident unit.

The unit will have a separate entrance with a covered drop off and canopy. This entrance way will lead to both the new skilled nursing unit as well as the special needs assisted living residence. Although this separate entrance is adjacent to the resident living area, Peconic Landing will retain the existing entrance and lobby for use by the new unit. Adequate signage to distinguish between the nursing home main entrance and the entrance to the special needs assisted living residence will be required.

Although located within Suffolk County evacuation zones, the location of the existing nursing home and the proposed nursing home expansion are outside the 500-year flood plain and well above the Superstorm Sandy surge level and projected 2050 and 2080 flood heights with sea level rise. The

typography and infrastructure in place at the CCRC make it a secure shelter, so much so that it has been designated as an official shelter for the Town of Southold. This designation gives Peconic Landing access to the town's emergency communications system as well as the town's supply of emergency food and water.

Compliance

Peconic Landing at Southold is currently in substantial compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of moveable equipment is estimated at $7,538,000, itemized as follows:

New Construction	$4,656,960
Site Development	200,000
Temporary Utilities	30,000
Design Contingency	465,696
Construction Contingency	232,848
Planning Consultant Fees	150,000
Architect/Engineering Fees	547,027
Other Fees (Consultant)	47,362
Moveable Equipment	485,092
Telecommunications	50,000
Financing Costs	240,834
Interim Interest Expense	388,960
CON Fee	2,000
Additional Processing Fee	41,221
Total Project Cost	$7,538,000

Project costs are based on a July 1, 2014 construction start date and a fifteen month construction period. The Bureau of Architectural and Engineering Facility Planning has determined that reimbursement shall be limited to $5,984,000 (plus CON fees) based upon the RHCF bed caps.

The applicant's financing plan appears as follows:

Equity	$3,050,000
Bank Loan (6.50% for a 30 year term)	4,488,000

Operating Budget

The applicant has submitted an incremental operating budget for the additional 16 RHCF beds, in 2013 dollars, for the first and third years, summarized below:

	Year One	Year Three
Revenues:		
Other	$138,852	$510,560
Total Revenues	$138,852	$510,560
Expenses:		
Operating	$1,206,807	$1,273,601
Capital	754,881	926,037
Total Expenses	$1,961,688	$2,199,638
Net Income or Excess of Revenues over Expenses	($1,822,836)	($1,689,078)

Utilization: (patient days)	1,483	5,453
Occupancy	25.39%	93.37%

The applicant projected low occupancy for the 16 additional RHCF beds. These additional beds will enable the facility to get closer to the normal 4:1 ratio of independent living units to SNF beds. CCRC's are required under contract to provide skilled nursing services to their residents. Utilization will be 100% "Other" during the first and third years. The applicant has indicated that "Other" consists of its Lifecare residents that will require nursing services. When the lifecare resident requires nursing services, the resident continues to pay their monthly service fee for their independent living apartment instead of the private pay per diem rate in nursing. The lifecare rate was equal to $93 per day in 2012. Because of this lifecare benefit, in general, nursing homes that are part of CCRC's lose money on a stand alone basis. However, the overall CCRC business (which includes independent living, enriched living and nursing) produces strong positive cash flow because of the up-front lifecare fees, sales of the independent living units and independent living monthly fees.

Capability and Feasibility

Total project cost of $7,538,000 will be met as follows: Equity of $3,050,000 from investments and a bank loan of $4,488,000 at an interest rate of 6.50% for a 30 year term.

Working capital requirements are estimated at $366,613, which is equivalent to two months of third year expenses. The applicant will provide equity from operations to meet the working capital requirement. Presented as BFA Attachment B are the 2012 certified financial statements and the April 30, 2013 internal financial statements of Peconic Landing at Southold, Inc. and affiliated companies, which indicates the availability of sufficient funds for the equity contribution to meet the total project cost and the working capital requirement.

The submitted budget indicates an incremental excess of revenues over expenses of ($1,822,836) and ($1,689,078) during the first and third years, respectively. The applicant has indicated that the incremental losses will be offset via positive cash-flow from operations of the CCRC.

As shown on Attachment B, the facility had an average positive working capital position and an average negative net asset position. The negative net asset position is impacted in large part by the buying and selling of cooperative units. When a shareholder sells to a new shareholder, Peconic Landing receives a remarketing fee equal to 6% (10% for new contracts) of the sale price per unit. If the unit is unsold after 12 months, Peconic Landing contractually is obligated to purchase the unit back for the original price less the remarketing fee. The average buyback price is approximately $550,000 and, in many cases, the unit is subsequently resold. Also, the entity incurred an excess of revenues over expenses of $375,149 through April 30, 2013.

Presented as BFA Attachment A are the 2011 and 2012 certified financial statements of Peconic Landing at Southold, Inc. and affiliated companies. As shown on Attachment B, the entity had an average positive working capital position and an average negative net asset position from 2011 through 2012. The entity incurred average losses of $2,946,831 from 2011 through 2012. The applicant has indicated that the losses are created in large part by the depreciation expense. The depreciation expense is considerably higher due to the overall initial cost of building the community. The applicant has indicated that they implemented the following steps to improve operations: using benchmarks to maintain staff levels and utilizing salary surveys to control salary expense and benefits; refinancing debt (end of 2010) to reduce debt coverage costs; enhance marketing of enriched housing beds to increase occupancy; reduce its property taxes; working with public relations firm to "brand" the Peconic Landing name and capitalize on its investment Grade Rating and upgrade preventative maintenance on all equipment and systems to reduce capital replacement costs.

Conclusion

Subject to the noted contingency, 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- 2011 and 2012 certified financial statements of Peconic Landing at Southold, Inc. and Affiliated Companies.
BFA Attachment B	Financial Summary- 2012 certified financial statements and the April 30, 2013 internal financial statements of Peconic Landing at Southold, Inc. and Affiliated Companies.

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

September 12, 2013

Upstate Request For Applications - Certified Home Health Agencies - Construction **Exhibit # 3**

	Number	Applicant/Facility
1.	131186 C	HCR (Clinton County)
2.	131187 C	HCR (Madison County)
3.	131188 C	HCR (Schoharie County)

Public Health and Health Planning Council

Project # 131186 C

HCR

County: **Clinton County**
Purpose: **Construction**

Program: **Certified Home Health Agency**
Submitted: **April 3, 2013**

Executive Summary

Description

L. Woerner, Inc. d/b/a HCR, an existing Article 36 certified home health agency (CHHA) located in Rochester, requests approval to expand to five additional counties. The applicant proposes to add the following counties: Essex, Hamilton, Franklin, Warren and St. Lawrence. The CHHA will provide the following services: Nursing; physical therapy; speech pathology; occupational therapy; medical social services, and home health aides.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to Section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for application (RFA) to establish new CHHAs or expand the approved geographic service areas and/or approved population of existing CHHAs. The applicant submitted an application in response to the RFA.

DOH Recommendation

Contingent Approval.

Need Summary

L. Woerner, Inc. d/b/a HCR, is requesting approval to expand into Essex, Hamilton, Franklin, Warren and St. Lawrence counties.

Program Summary

The applicant proposes to continue to operate the CHHA from their current office practice location at 176 US Oval, Suite 3, Plattsburgh, New York 12903, to serve Clinton, Essex, Franklin, Hamilton, St. Lawrence and Warren counties.

L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	$5,070,912
Expenses	4,760,432
Net Income	$310,440

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.

Recommendations

Health Systems Agency

There will be no HSA review of this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of executed leases for all five sites, acceptable to the Department of Health.[BFA]

Approval conditional upon:

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

Council Action Date

October 3, 2013.

Need Analysis

Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and 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 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 17th and 27th 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 17th and 27th 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.

L. Woerner, Inc. d/b/a HCR (Home Care of Rochester) currently operates several CHHAs throughout New York State.

The applicant has created four region areas of service in the State:

- Region One is currently approved to serve Clinton County and is requesting approval to expand into Essex, Hamilton, Franklin, Warren and St. Lawrence counties.
- Region Two is currently approved to serve Madison County and is requesting approval to expand into Onondaga, Cayuga, Oswego and Jefferson counties. This region also will also include L. Woerner, Inc. d/b/a HCR currently approved to serve Cortland County.
- Region Three is currently approved to serve approved to serve Schoharie County and is requesting approval to expand into Otsego County. This region will also include L. Woerner, Inc. d/b/a HCR currently approved to serve Delaware County.
- Region Four is currently approved to serve Monroe, Genesee and Orleans counties.

This CON application is to expand L. Woerner, Inc. d/b/a HCR's existing CHHA, approved to serve Clinton County, to include Essex, Hamilton, Franklin, Warren and St. Lawrence counties. The CHHA sponsors a Long Term Home Health Care Program (LTHHCP) approved to serve Clinton County.

L. Woerner, Inc. d/b/a HCR has a proven track record of successfully operating CHHAs in rural counties and a strong history of working with governmental and community organizations within the counties they serve. The applicant was able to describe how the expansion into the proposed counties would result in a contiguous service area for the CHHA that would enable the CHHA to offer the choice of quality care in many rural counties with limited CHHA services. HCR is currently participating with two MLTCPs, Elderplan and VNS Choice, to provide care coordination in some of its current service areas. In addition, they plan to establish partnerships with other MLTCPs that operate in the proposed areas and describe their existing relationships with local health departments and social service districts in each county along with linkages and MLTCPs contracts they have waiting for their approval to operate in the counties proposed. These existing relationships and linkages to enhance care coordination and transitions, as well as streamlining operations and producing cost savings. In addition, HCR currently participants in two Health Homes.

The applicant described specific health management programs that the CHHA has to manage complex and high cost cases and how they will utilize their extensive experience in transitioning patients to the most cost effective care and services. HCR has the capacity and experience to efficiently and effectively develop services and programs in primarily rural counties. They described in detail many of the care management programs that are offered by the CHHA to control high cost and complex cases including care management programs for joint replacement therapy, telemonitoring, a wound/ostomy team, a stroke program, a pain management team, palliative care, a cardiac disease program, a diabetic program and a falls prevention program. Their in place disease centered programs will continue to help with high cost and complex cases, and they have described how these programs demonstrate a history of producing lower hospital admissions for patients under their care. In addition, to control costs, HCR plans to leverage their existing CHHA services in neighboring counties to provide services and recruit staff for adjacent counties.

The applicant provided relevant data and in depth data analysis regarding health status indicators and demographics of the aging population for each of the counties they propose to serve. The applicant demonstrated public need using the criteria of 709.1(a) and provided supporting data. They also provided 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 included a gap analysis and demonstrated need for all counties requested and described how all elements of the county demographics and growth issues are reasons why need is not currently being met. The applicant stresses how they will focus on community outreach and engagement as they pursue community and health care provider education to ensure everyone that could benefit from home care services and qualifies for them actually receives them in the most cost effective manner.

HCR also elaborated on how the needs of each county will be met by their CHHA services in providing choice and access to quality care. Specifically regarding the expansion of their CHHA currently serving Clinton County into St. Lawrence, Essex, Franklin, Hamilton, and Warren counties the applicant discussed how access to quality care was a problem with only county run CHHAs in place. They discussed how the rural nature of the counties was a problem and the counties could benefit from the

applicant's experience in delivering home health care in rural settings. They also described how they would use telehealth in the region and supporting the region's Medical Home Pilot Program.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

L. Woerner, Inc. d/b/a HCR, is an existing for-profit corporation currently operating an Article 36 CHHA and LTHHCP both serving Clinton County. This CON application # 131186-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Clinton County into Essex, Franklin, Hamilton, St. Lawrence and Warren counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Additional CON applications have also been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand into additional counties. Two of these CON applications are also being presented to the PHHPC at this time under separate cover.

CON application # 131187-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Madison County into Cayuga, Onondaga, Oswego and Jefferson counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

CON application # 131188-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Schoharie County into Otsego County, 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 proposes to continue to operate the CHHA from their current office practice location at 176 US Oval, Suite 3, Plattsburgh, New York 12903, to serve Clinton, Essex, Franklin, Hamilton, St. Lawrence and Warren counties.

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

L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has indicated that they plan to enter into one lease for each of the five counties that they are expanding to. As of this date, they have not entered into any agreements. As a contingency of approval, the applicant must submit executed leases for all five sites.

Operating Budget

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

	Year One	Year Three
Revenues:		
Medicaid Managed Care	$620,223	$651,621
Commercial Fee-for-Service	1,240,445	1,303,243
Medicare Fee-for-Service	2,817,750	2,960,399
Private Pay	148,150	155,650
Total Revenues	$4,826,567	$5,070,912
Total Expenses	$4,531,082	$4,760,472
Net Income	$295,485	$310,440

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

	Year One	Year Three
Medicaid Managed Care	10.00%	10.00%
Commercial Fee-for-Service	20.00%	20.00%
Medicare Fee-for-Service	65.00%	65.00%
Private Pay	3.00%	3.00%
Charity Care	2.00%	2.00%

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

Capability and Feasibility

There is no total project cost associated with this application.

Working capital requirements are estimated at $793,412, which is equivalent to two months of third year expenses. The applicant has indicated that the working capital requirement will be met via equity from the shareholders of L. Woerner, Inc. Presented as BFA Attachment A is the personal net worth statements of the shareholders of L. Woerner, Inc., which indicates the availability of sufficient funds for the working capital requirement.

The submitted budget indicates an incremental net income of $295,455 and $310,440 during the first and third years. Revenues are reflective of current payment rates as well as the implementation of the Medicaid Episodic Payment System. The budget appears reasonable.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of L. Woerner, Inc. As shown on Attachment B, the facility had an average positive working capital position and an average negative shareholders position during 2010 and 2011. Also, the facility incurred average operating losses of $3,336,003 from 2010 and 2011. The applicant has indicated that the reason for the 2010 loss was their contribution of $4,000,000 ESOP contribution. The applicant has indicated that the reasons for the 2011 loss was the following: ESOP contributions of $1,000,000; the Company incurred $2M of non-recurring expenses in an effort to position the Company as a preferred provider of comprehensive patient centered across the state, and delays in receiving reimbursement from Medicaid and Medicare for its newly acquired agencies.

Presented as BFA Attachment C is the December 31, 2012 internal financial statements of L. Woerner, Inc. As shown, the Company had a negative working capital position and a negative shareholders position in 2012. Also, the Company incurred a net loss of $2,721,044 in 2012. The applicant has indicated that the reason for the losses are as follows: ESOP contribution of $1,000,000; expenses incurred due to facility integrating the newly acquired agencies, and delays in receiving reimbursement from its two largest payors, Medicaid and Medicare, as the enrollment process took an average of nine months to complete for each of the newly acquired agencies. The applicant implemented the following steps to improve operations: the newly acquired agencies were largely integrated, and the Company is

proposing to expand its effort into13 additional counties. Also, they have improved Medicare case mix, increased volumes and reduced costs through efficiencies via new technology (software).

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Financial Summary- 2010 and 2011 certified financial statements of L. Woerner
BFA Attachment C	Financial Summary- 2012 internal financial statements of L. Woerner

Public Health and Health Planning Council

Project # 131187 C

HCR

County: **Madison County**
Purpose: **Construction**

Program: **Certified Home Health Agency**
Submitted: **April 3, 2013**

Executive Summary

Description

L. Woerner, Inc. d/b/a HCR, an existing Article 36 certified home health agency (CHHA) located in Rochester, requests approval to expand into four additional counties. The applicant proposes to add the following counties: Oswego, Onondaga, Jefferson and Cayuga. The CHHA will provide the following services: Nursing; physical therapy; speech pathology; occupational therapy; medical social services, and home health aides.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to Section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for application (RFA) to establish new certified home health agencies or expand the approved geographic service areas and/or approved population of existing CHHAs. The applicant submitted an application in response to the RFA approval.

DOH Recommendation

Contingent Approval.

Need Summary

L. Woerner, Inc. d/b/a HCR, an existing CHHA, approved to serve Madison County, which sponsors a Long Term Home Health Care Program (LTHHCP) approved to serve Madison County, is requesting approval to expand into Onondaga, Cayuga, Oswego and Jefferson counties.

Program Summary

The applicant proposes to continue to operate the CHHA from their current office practice location at 135 North Court Street, Wampsville, New York 13163, to serve Madison, Cayuga, Onondaga, Oswego and Jefferson counties.

L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	$8,348,395
Expenses	8,017,080
Net Income	$331,315

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.

Recommendations

Health Systems Agency

The HSA has no comment on this application

Office of Health Systems Management

Approval contingent upon:

1. Submission of executed leases for all four sites, acceptable to the Department of Health. [BFA]

Approval conditional upon:

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

Council Action Date

October 3, 2013.

Need Analysis

Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and 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 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 17th and 27th 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 17th and 27th 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.

L. Woerner, Inc. d/b/a HCR (Home Care of Rochester) currently operates several CHHAs throughout New York State.

The applicant has created four region areas of service in the State:

- Region One is currently approved to serve Clinton County and is requesting approval to expand into Essex, Hamilton, Franklin, Warren and St. Lawrence counties.
- Region Two is currently approved to serve Madison County and is requesting approval to expand into Onondaga, Cayuga, Oswego and Jefferson counties. This region also will also include L. Woerner, Inc. d/b/a HCR currently approved to serve Cortland County.
- Region Three is currently approved to serve approved to serve Schoharie County and is requesting approval to expand into Otsego County. This region will also include L. Woerner, Inc. d/b/a HCR currently approved to serve Delaware County.
- Region Four is currently approved to serve Monroe, Genesee and Orleans counties.

This CON application is to expand L. Woerner, Inc. d/b/a HCRs existing CHHA, approved to serve Madison County, which has requested approval to expand into Onondaga, Cayuga, Oswego and Jefferson counties. The CHHA sponsors a Long Term Home Health Care Program (LTHHCP) approved to serve Madison County.

L. Woerner, Inc. d/b/a HCR has a proven track record of successfully operating CHHAs in rural counties and a strong history of working with governmental and community organizations within the counties they serve. The applicant was able to describe how the expansion into the proposed counties would result in a contiguous service area for the CHHA that would enable the CHHA to offer the choice of quality care in many rural counties with limited CHHA services. HCR is currently participating with two MLTCPs, Elderplan and VNS Choice, to provide care coordination in some of its current service areas. In addition, they plan to establish partnerships with other MLTCPs that operate in the proposed areas and describe their existing relationships with local health departments and social service districts in each county along with linkages and MLTCPs contracts they have waiting for their approval to operate in the counties proposed. These existing relationships and linkages to enhance care coordination and transitions, as well as streamlining operations and producing cost savings. In addition, HCR currently participants in two Health Homes.

The applicant described specific health management programs that the CHHA has to manage complex and high cost cases and how they will utilize their extensive experience in transitioning patients to the most cost effective care and services. HCR has the capacity and experience to efficiently and effectively develop services and programs in primarily rural counties. They described in detail many of the care management programs that are offered by the CHHA to control high cost and complex cases including care management programs for joint replacement therapy, telemonitoring, a wound/ostomy team, a stroke program, a pain management team, palliative care, a cardiac disease program, a diabetic program and a falls prevention program. Their in place disease centered programs will continue to help with high cost and complex cases, and they have described how these programs demonstrate their history of producing lower hospital admissions for patients under their care. In addition, to control costs, HCR plans to leverage their existing CHHA services in neighboring counties to provide services and recruit staff for adjacent counties.

The applicant provided relevant data and in depth data analysis regarding health status indicators and demographics of the aging population for each of the counties they propose to serve. The applicant demonstrated public need using the criteria of 709.1(a) and provided supporting data. They also provided 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 included a gap analysis and demonstrated need for all counties requested and described how all elements of the county demographics and growth issues are reasons why need is not currently being met. The applicant stresses how they will focus on community outreach and engagement as they pursue community and health care provider education to ensure everyone that could benefit from home care services and qualifies for them actually receives them in the most cost effective manner.

HCR also elaborated on how the needs of each county will be met by their CHHA services in providing choice and access to quality care. Specifically regarding the expansion of their CHHA currently serving Madison County into Jefferson, Oswego, Onondaga, and Cayuga counties the applicant discussed the need of Crouse Hospital for a home care provider to partner with. They also discussed how they will address Oswego County's concern over diabetic care. They described how they will address Cayuga County's issue with falls among the elderly population and their experience with a patient from Jefferson County who could not get the Physical Therapy services he needed from the agencies in the county.

From a need perspective, approval is recommended

Programmatic Analysis

Review Summary

L. Woerner, Inc. d/b/a HCR, is an existing for-profit corporation currently operating an Article 36 CHHA and LTHHCP both serving Madison County. This CON application # 131187-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Madison County into Cayuga, Onondaga, Oswego and Jefferson counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Additional CON applications have also been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand into additional counties. Two of these CON applications are also being presented to the PHHPC at this time under separate cover.

CON application # 131186-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Clinton County into Essex, Franklin, Hamilton, St. Lawrence and Warren counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

CON application # 131188-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Schoharie County into Otsego County, 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 proposes to continue to operate the CHHA from their current office practice location at 135 North Court Street, Wampsville, New York 13163, to serve Madison, Cayuga, Onondaga, Oswego and Jefferson counties.

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	

L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has indicated that they plan to enter into one lease for each of the four counties that they are expanding to. As of this date, they have not entered into any agreements. As a contingency of approval, the applicant must submit executed leases for all four sites.

Operating Budget

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

	Year One	Year Three
Revenues:		
Medicaid Managed Care	$1,573,775	$1,653,447
Commercial Fee-for-Service	2,076,325	2,181,439
Medicare Fee-for-Service	3,994,988	4,197,234
Private Pay	301,035	316,275
Total Revenues	$7,946,123	$8,348,395
Total Expenses	7,630,773	$8,017,080
Net Income	$315,350	$331,315

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

	Year One	Year Three
Medicaid Managed Care	12.65%	12.35%
Commercial Fee-for-Service	16.70%	16.29%
Medicare Fee-for-Service	65.63%	64.05%
Private Pay	3.02%	5.31%
Charity Care	2.00%	2.00%

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

Capability and Feasibility

There is no total project cost associated with this application.

Working capital requirements are estimated at $1,336,180, which is equivalent to two months of third year expenses. The applicant has indicated that the working capital requirement will be met via equity from the shareholders of L. Woerner, Inc. Presented as BFA Attachment A is the personal net worth statements of the shareholders of L.Woerner, Inc., which indicates the availability of sufficient funds for the working capital requirement.

The submitted budget indicates an incremental net income of $315,350 and $331,315 during the first and third years. Revenues are reflective of current payment rates as well as the implementation of the Medicaid Episodic Payment System. The budget appears reasonable.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of L. Woerner, Inc. As shown on Attachment B, the facility had an average positive working capital position and an average negative shareholders position during 2010 and 2011. Also, the facility incurred average operating losses of $3,336,003 from 2010 and 2011. The applicant has indicated that the reason for the 2010 loss was their ESOP contribution of $4,000,000. The applicant has indicated that the reasons for the 2011 losses are as follows: ESOP contributions of $1,000,000; the Company incurred $2M of non recurring expenses in an effort to position the Company as a preferred provider of comprehensive patient centered across the

state, and delays in receiving reimbursement from Medicaid and Medicare from its newly acquired agencies.

Presented as BFA Attachment C is the December 31, 2012 internal financial statements of L. Woerner, Inc. As shown, the Company had a negative working capital position and a negative shareholders position in 2012. Also, the Company incurred a net loss of $2,721,044 in 2012. The applicant has indicated that the reason for the losses are as follows: ESOP contribution of $1,000,000; expenses incurred due to facility integrating the newly acquired agencies, and delays in receiving reimbursement from its two largest payors, Medicaid and Medicare, as the enrollment process took an average of nine months to complete for each of the newly acquired agencies. The applicant implemented the following steps to improve operations: the newly acquired agencies were largely integrated, and the Company is proposing to expand its effort into 13 additional counties. The applicant has also improved Medicare case mix and increased volumes and reduced costs through new technology (software).

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Financial Summary- 2010 and 2011 certified financial statements of L. Woerner
BFA Attachment C	Financial Summary- 2012 internal financial statements of L. Woerner

Public Health and Health Planning Council

Project # 131188 C

HCR

County: **Schoharie County**
Purpose: **Construction**

Program: **Certified Home Health Agency**
Submitted: **April 3, 2013**

Executive Summary

Description

L. Woerner, Inc. d/b/a HCR, an existing Article 36 certified home health agency (CHHA) located in Rochester, requests approval to expand into Otsego County. The CHHA will provide the following services: Nursing; physical therapy; speech pathology; occupational therapy; medical social services, and home health aides.

On December 8, 2011, the Public Health and Health Planning Council adopted an amendment to Section 760.5 of Title 10, NYCRR. This emergency regulation authorized the Commissioner of Health to issue a request for application (RFA) to establish new certified home health agencies or expand the approved geographic service areas and/or approved population of existing CHHAs. The applicant submitted an application in response to the RFA approval.

DOH Recommendation

Contingent Approval.

Need Summary

L. Woerner, Inc. d/b/a HCR, an existing CHHA, approved to serve Schoharie County, is requesting approval to expand into Otsego County.

Program Summary

The applicant proposes to continue to operate the CHHA from their current office practice location at 795 E. Main Street, Suite 10, Cobleskill, New York 12043, to serve Schoharie and Otsego Counties.

L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	$525,914
Expenses	485,253
Net Income	$ 40,661

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed lease, acceptable to the Department of Health. [BFA]

Approval conditional upon:

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

Council Action Date

October 3, 2013.

Need Analysis

Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and 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 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 17th and 27th 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 17th and 27th 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.

L. Woerner, Inc. d/b/a HCR (Home Care of Rochester) currently operates several CHHAs throughout New York State.

The applicant has created four region areas of service in the State:

- Region One is currently approved to serve Clinton County and is requesting approval to expand into Essex, Hamilton, Franklin, Warren and St. Lawrence counties.
- Region Two is currently approved to serve Madison County and is requesting approval to expand into Onondaga, Cayuga, Oswego and Jefferson counties. This region also will also include L. Woerner, Inc. d/b/a HCR currently approved to serve Cortland County.
- Region Three is currently approved to serve approved to serve Schoharie County and is requesting approval to expand into Otsego County. This region will also include L. Woerner, Inc. d/b/a HCR currently approved to serve Delaware County.
- Region Four is currently approved to serve Monroe, Genesee and Orleans counties.

This CON application is to expand L. Woerner, Inc. d/b/a HCR's existing CHHA, approved to serve Schoharie County, which has requested approval to expand into Otsego County.

L. Woerner, Inc. d/b/a HCR has a proven track record of successfully operating CHHAs in rural counties and a strong history of working with governmental and community organizations within the counties they serve. The applicant was able to describe how the expansion into the proposed counties would result in a contiguous service area for the CHHA that would enable the CHHA to offer the choice of quality care in many rural counties with limited CHHA services. HCR is currently participating with two MLTCPs, Elderplan and VNS Choice, to provide care coordination in some of its current service areas. In addition, they plan to establish partnerships with other MLTCPs that operate in the proposed areas and describe their existing relationships with local health departments and social service districts in each county along with linkages and MLTCPs contracts they have waiting for their approval to operate in the counties proposed. These existing relationships and linkages to enhance care coordination and transitions, as well as streamlining operations and producing cost savings. In addition, HCR currently participants in two Health Homes.

The applicant described specific health management programs that the CHHA has to manage complex and high cost cases and how they will utilize their extensive experience in transitioning patients to the most cost effective care and services. HCR has the capacity and experience to efficiently and effectively develop services and programs in primarily rural counties. They described in detail many of the care management programs that are offered by the CHHA to control high cost and complex cases including care management programs for joint replacement therapy, telemonitoring, a wound/ostomy team, a stroke program, a pain management team, palliative care, a cardiac disease program, a diabetic program and a falls prevention program. Their in place disease centered programs will continue to help with high cost and complex cases, and they have described how these programs demonstrate their history of producing lower hospital admissions for patients under their care. In addition, to control costs, HCR plans to leverage their existing CHHA services in neighboring counties to provide services and recruit staff for adjacent counties.

The applicant provided relevant data and in depth data analysis regarding health status indicators and demographics of the aging population for each of the counties they propose to serve. The applicant demonstrated public need using the criteria of 709.1(a) and provided supporting data. They also provided 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 included a gap analysis and demonstrated need for all counties requested and described how all elements of the county demographics and growth issues are reasons why need is not currently being met. The applicant stresses how they will focus on community outreach and engagement as they pursue community and health care provider education to ensure everyone that could benefit from home care services and qualifies for them actually receives them in the most cost effective manner.

HCR also elaborated on how the needs of each county will be met by their CHHA services in providing choice and access to quality care. Specifically regarding the expansion of their CHHA currently serving Schoharie County into Otsego County the applicant discussed how there is only 1 CHHA in the county, which is one of the reasons there is unmet need. They cited lack of discharges to homecare in the county

as proof of the unmet need. The applicant quoted a statement from a local hospital leadership that said the hospital affiliated agency could not manage the volume of cases in the region.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

L. Woerner, Inc. d/b/a HCR, is an existing for-profit corporation currently operating an Article 36 CHHA currently serving Schoharie County. This CON application # 131188-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Schoharie County into Otsego County, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Additional CON applications have also been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand into additional counties. Two of these CON applications are also being presented to the PHHPC at this time under separate cover.

CON application # 131186-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Clinton County into Essex, Franklin, Hamilton, St. Lawrence and Warren counties, pursuant to the recent Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

CON application # 131187-C has been submitted by L. Woerner, Inc. d/b/a HCR, to request approval to expand the service area of their existing CHHA currently serving Madison County into Cayuga, Onondaga, Oswego and Jefferson 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 proposes to continue to operate the CHHA from their current office practice location at 795 E. Main Street, Suite 10, Cobleskill, New York 12043, to serve Schoharie and Otsego counties

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

L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has indicated that they plan to enter into a lease for Otsego County. As of this date, they have not entered into any agreements. As a contingency of approval, the applicant must submit an executed lease.

Operating Budget

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

	Year One	Year Three
Revenues:		
Medicaid Managed Care	$52,900	$55,578
Commercial Fee-for-Service	105,800	111,156
Medicare Fee-for-Service	329,063	345,721
Private Pay	12,810	13,459
Total Revenues	$500,573	$525,914
Total Expenses	$461,870	$485,253
Net Income	$38,703	$40,661

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

	Year One	Year Three
Medicaid Managed Care	10.00%	9.94%
Commercial Fee-for-Service	20.00%	19.93%
Medicare Fee-for-Service	65.00%	64.81%
Private Pay	3.00%	3.32%
Charity Care	2.00%	2.00%

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

Capability and Feasibility

There is no total project cost associated with this application.

Working capital requirements are estimated at $87,652, which is equivalent to two months of third year expenses. The applicant has indicated that the working capital requirement will be met via equity from the shareholders of L. Woerner, Inc. Presented as BFA Attachment A is the personal net worth statements of the shareholders of L. Woerner, Inc., which indicates the availability of sufficient funds for the working capital requirement.

The submitted budget indicates an incremental net income of $38,703 and $40,661 during the first and third years. Revenues are reflective of current payment rates as well as the implementation of the Medicaid Episodic Payment System. The budget appears reasonable.

Presented as BFA Attachment B are the 2010 and 2011 certified financial statements of L. Woerner, Inc. As shown on Attachment B, the facility had an average positive working capital position and an average negative shareholders position during 2010 and 2011. Also, the facility incurred average operating losses of $3,336,003 from 2010 and 2011. The applicant has indicated that the reason for the 2010 loss was their contribution of $4,000,000 ESOP contribution. The applicant has indicated that the reasons for the 2011 loss was the following: ESOP contributions of $1,000,000; the Company incurred $2M of non-recurring expenses in an effort to position the Company as a preferred provider of comprehensive patient centered across the state, and delays in receiving reimbursement from Medicaid and Medicare from its newly acquired agencies.

Presented as BFA Attachment C is the December 31, 2012 internal financial statements of L. Woerner, Inc. As shown, the Company had a negative working capital position and a negative shareholders position in 2012. Also, the Company incurred a net loss of $2,721,044 in 2012. The applicant has indicated that the reason for the losses are as follows: ESOP contribution of $1,000,000; expenses incurred due to facility integrating the newly acquired agencies and delays in receiving reimbursement

from its two largest payors, Medicaid and Medicare, as the enrollment process took an average of nine months to complete for each of the newly acquired agencies. The applicant implemented the following steps to improve operations: the newly acquired agencies were largely integrated and the Company is proposing to expand its effort into 13 additional counties. The applicant has also improved its Medicare case mix and increased volumes and reduced costs through new technology (software).

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Financial Summary- 2010 and 2011 certified financial statements of L. Woerner
BFA Attachment C	Financial Summary- 2012 internal financial statements of L. Woerner

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

September 12, 2013

Upstate Dear Administrator Letters – Long Term Home Health Care Program - Construction **Exhibit # 4**

1.	121267 C	TLC Health Network-Lake Shore Hospital (Chautauqua County)

Public Health and Health Planning Council

Project # 121267-C
TLC Health Network-Lake Shore Hospital

County: **Chautauqua County**
Purpose: **Construction**

Program: **Certified Home Health Agency**
Submitted: **April 19, 2012**

Executive Summary

Description
TLC Health Network-Lake Shore Hospital, an existing voluntary, not-for-profit, long term home health care program (LTHHCP) is requesting approval to expand their LTHHCP by establishing a certified home health agency (CHHA) to serve Cattaraugus, Chautauqua and Erie counties. TLC will operate the CHHA under the assumed name TLC Health Network Home Health Services. Lake Erie Regional Health System of New York, a not-for-profit management holding corporation, is the sole corporate member of TLC.

On January 25, 2012, the Department issued a Request for Applications (RFA) to establish new or expand existing CHHAs in New York State. LTHHCPs were to submit a response to the RFA if they were interested in expending the population they serve. Subsequently, on May 10, 2012, the Department issued a letter stating that Chapter 56 of the Laws of 2012-13, authorized the Commissioner of Health to grant an expedited review of a certificate of need application (CON) submitted by an existing LTHHCP requesting approval for a general purpose CHHA. This CON application is in response to that letter.

DOH Recommendation
Approval

Need Summary
TLC is proposing to expand the population served and the service area of their LTHHCP by establishing a CHHA to serve Chautauqua, Erie and Cattaraugus counties.

Program Summary
The applicant proposes to provide the following home health services: home health aide, medical social services, nursing, occupational therapy, physical therapy and speech language pathology.

TLC Health Network LTHHCP is currently in compliance with all applicable codes, rules and regulations.

Financial Summary
There are no project costs associated with this application.

Incremental Budget:	Revenues:	$1,599,581
	Expenses:	965,332
	Gain(Loss):	$ 634,249

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

Council Action Date

October 3, 2013.

Need Analysis

Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and 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 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 17th and 27th 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 17th and 27th 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.

The applicant is an existing LTHHCP that is a member of a larger health care network that provides an array of health services. Lake Erie Regional Health System of New York (LERHSNY), of which it is a part, was formed through a HEAL grant consolidating Brooks Memorial Hospital and TLC Health Network. TLC Health Network was established in 2002 through a merger of Lake Shore Health Center and Tri-County Memorial Hospital. TLC Health Network operates a 35 bed inpatient hospital, a 120-bed SNF, and

a 267-slot LTHHCP. TLC delivers hospital, emergency, primary care, long term care, home health, mental health, chemical programs, and clinical laboratory services within the three county area.

The LTHHCP currently has an approved and funded Telehealth project. The use of Telehealth and their current Meditech electronic medical record system will support MRT iniatives. The applicant also participates with County Health Departments and Departments of Aging in CMS sponsored Care Transition programs. These programs focus on supporting the transition of congestive heart failure and chronic obstructive pulmonary disease patients from hospital to home care by reconciling medications, monitoring progress, and linking to available resources and services in order to prevent readmissions to hospital, recurring ER visits, and repeated visits to primary care providers.

The applicant has established relationships with two managed care organizations, Fidelis Managed Care and Univera Healthcare, with whom they subcontract for Managed Long Term Care services. In addition, the applicant plans to subcontract with both plans to provide home care services to their MLTCP patients. The applicant also names the specific sources of their referrals within the proposed service area.

Being a member of an extensive hospital based health care network, the applicant has already established linkages throughout the rural communities with physician practices, emergency response providers (fire departments, EMS squads, ambulance services), social day care programs, all three County Departments of Health and Departments of Aging, and the Seneca Nation of Indians.

The applicant's existing care transitions program concentrates on preventing admissions and readmissions into hospitals and long term care facilities, by providing a "coach" to transition CHF and COPD patients from hospital to home by reconciling medications, monitoring progress, and linking to available resources and services in order to prevent readmissions to hospital.

The applicant provided data on health indicators in each of the 3 counties being requested, compared to NYS in total, demonstrating that each of the 3 requested counties have rates that are higher than the overall NYS rate in areas such as:
- poor physical health for 14 or more days of the past 30 days, for both age 65+ and adults of all ages,
- limited activity due to physical, mental, emotional issues, for both age 65+ and adults of all ages,
- disabilities, for both age 65+ and adults of all ages,
- cardiovascular diseases, for both age 65+ and adults of all ages,
- coronary heart disease, for both age 65+ and adults of all ages, and
- diabetes, for both age 65+ and adults of all ages.

The applicant lists success in their LTHHCP's ability to manage patients with cardiac, pulmonary, circulatory and respiratory diseases at home. 60% of their patients were hospitals inpatients up to 14 days prior to being admitted into their LTHHCP, and 34% were nursing home patients. Those LTHHCP patients have successfully been receiving services without the need for readmission into those inpatient facilities.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

The applicant proposes to serve all three counties from an office located at 845 Routes 5 and 20, Irving, New York 14081. No branch offices are contemplated at this time.

The applicant proposes to provide the following home health services: home health aide, medical social services, nursing, occupational therapy, physical therapy and speech language pathology.

TLC Health Network LTHHCP is currently in compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

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

	Year One	Year Three
Revenues	$534,231	$1,599,581
Expenses	318,824	965,332
Net Gain(Loss)	$ 215,407	$ 634,249

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

Payor	Year One and Year Three
Commercial Fee-for-Service	5.4%
Commercial Managed Care	2.9%
Medicare Managed Care	17.6%
Medicare Fee-for-Service	35.3%
Medicaid Managed Care	34.8%
Private pay	2.0%
Charity Care	2.0%

Expense and utilization assumptions are based on the existing LTHHCP's historical experience. Revenues are reflective of current payment rates as well as the Medicaid Episodic Payment system.

Capability and Feasibility

There are no project costs associated with this application.

Working capital requirements, estimated at $160,889, appear reasonable based on two months of third year expenses and will be provided through the existing operation.

The submitted budget indicates that the applicant will achieve a $215,407 and $634,249 incremental net revenue in the first and third years of operations, respectively. Revenue is based on current payment rates for CHHAs. The submitted budget appears reasonable.

Presented as BFA Attachment A is the 2012 audited financial summary, which shows the applicant has maintained positive working capital and net assets and generated net loss of $4,018,724 from recurring operations for 2012. The loss in 2012 was due to expenses exceeding revenues from nonrecurring expenses relating to flood damages at one of its facilities and is offset by $6,783,494 of net nonrecurring

income from flood insurance proceeds and government relief funding, resulting in income from operations of $2,764,770.

Presented as BFA Attachment B is the internal financial summary as of June 30, 2013, which shows the applicant has maintained positive working capital and net assets and generated net loss of $4,354,268.

The internal financial summaries do not reflect insurance settlements at this time. However, TLC Health Network has taken the following steps to improve operations:

- Reduction in staffing without interruption to patient care.
- Maximizing resources within the Lake Erie Regional Health System of New York to gain efficiencies and reduce overhead.
- Re-evaluate leadership positions and restructure administration.
- Maximize reimbursement through more efficient billing, coding and registration practices.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for TLC Health Network-2012 audited
BFA Attachment B	Financial Summary for TLC Health Network-internals as of June 30, 2013

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

September 12, 2013

Acute Care Services – Establish/Construct **Exhibit # 5**

	Number	Applicant/Facility
1.	132025 E	White Plains Hospital Center (Westchester County)
2.	132026 E	Northern Westchester Hospital (Westchester County)
3.	132027 E	Lawrence Hospital Center (Westchester County)
4.	132028 E	Phelps Memorial Hospital (Westchester County)
5.	132088 E	St. Lawrence Health System, Inc. (St. Lawrence County)

Public Health and Health Planning Council

Project #132025-E

White Plains Hospital Center

County: **Westchester County**
Purpose: **Establishment**

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

Executive Summary

Description

White Plains Hospital Center, a 292-bed not-for-profit hospital located in Westchester County, requests approval for the disestablishment of HealthStar Network, Inc., d/b/a Stellaris Health Network (Stellaris) as its active parent and co-operator. Stellaris will continue as a shared service provider under the terms of a shared Services and Operating Agreement on an interim basis until Stellaris winds down.

There are no costs associated with this project and there are no changes to staffing concurrent with the approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. The hospital is not part of an obligated group.

DOH Recommendation

Contingent Approval.

Need Summary

This facility will remain a separate not-for-profit corporation licensed under Article 28. There will be no change in either authorized services or the number of beds as a result of the proposed change in governance structure, and no need review is necessary.

Program Summary

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

Financial Summary

There are no costs associated with this application.

Budget:

Revenues	$341,324,753
Expenses	334,181,384
Excess of Revenues over Expenses	$7,143,369

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of the application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed shared services and operating agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a Certificate of Amendment of the Certificate of Incorporation of White Plains Hospital Medical Center, acceptable to the Department. [CSL]
3. Submission of a Termination Agreement, acceptable to the Department. [CSL]
4. Submission of a Certificate of Amendment of the Certificate of Incorporation of Healthstar Network, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date 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 application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 3, 2013.

Need Analysis

Background

White Plains Hospital Center, an existing 292-bed acute care community hospital located at 41 East Post Road, White Plains, 10601, in Westchester County, is seeking approval for the disestablishment of Stellaris Health Network as the active parent and co-operator of the facility.

Bed Category	Certified Capacity
Coronary Care	8
Intensive Care	8
Maternity	28
Medical / Surgical	218
Neonatal Continuing Care	9
Neonatal Intensive Care	6
Pediatric	15
Total	292

White Plains Hospital is authorized to operate three extension clinics in Westchester County that provide such services as Audiology O/P, Certified Mental Health Services O/P, Dental O/P, Rehabilitation O/P, Primary Medical Care O/P, Therapy Occupational O/P, Therapy Physical O/P.

The hospital has the following State designations:

- Level 3 Perinatal Center
- Stroke Center

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

White Plains Hospital Center, located at 41 East Post Road, White Plains (Westchester County), New York, requests approval of the disestablishment of HealthStar, Inc. d/b/a Stellaris Health Network (Stellaris). [In separate CON Applications, Northern Westchester Hospital, Lawrence Hospital Center and Phelps Memorial Hospital (#132026, 132027, and 132028, respectively), similarly request disestablishment of Stellaris.]

This project represents a corporate reorganization for the involved hospitals. Subsequent to approval, they will continue to operate as they historically have without any changes to their Operating Certificate. There will be no changes to staffing or services concurrent with approval of this application.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Shared Services and Operating Agreement

The applicant has submitted a draft shared services and operating agreement, as summarized:

Date:	June 13, 2013, however, this Agreement shall first become effective as of the date revised Certificate of Incorporation effectuate, the removal of the Service Provider as the Sole member of each Operator.
Facilities:	Northern Westchester Hospital Association; White Plains Hospital Center; Lawrence Hospital and Phelps Memorial Hospital Association.
Service Provider:	HealthStar Network, Inc.
Services Provided:	Supply chain relationship management, oversight and reporting under the Med Assets GPO Agreements, clinical value analysis and physician preference item services; insurance function management, oversight and consulting; monitor and coordinate benefits and subrogation of claims; clinical informatics and analysis and information technology management, including pharmacy supply chain; Data Marts and data reporting services; ambulance transports, emergency preparedness, fly car system, call center and Town emergency medical technician leasing; access to information technology under existing capital lease arrangement and access to information technology support and related services from Dell and other IT services providers currently contracting with Service Provider.
Term:	The Agreement shall expire on June 30, 2018.
Fee:	$108,984,916 for all four hospitals.

The fee associated with White Plains Hospital is $29,286,220.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, during the first year after the disestablishment of HealthStar, Inc., which is summarized below:

Revenues:	
Inpatient	$172,400,549
Outpatient	156,760,722
Other Operating Revenues	12,163,482
Total Revenues	$341,324,753
Expenses	
Operating	$318,152,013
Capital	16,029,371
Total Expenses	$334,181,384
Excess of Revenues over Expenses	$7,143,369
Utilization:	
Discharges	17,346
Visits	307,379

Utilization broken down by payor source during the first year for inpatient and outpatient services:

Inpatient	
Medicaid Managed Care	12.45%
Medicare Fee-for-Service	36.05%
Medicare Managed Care	7.65%
Commercial Fee-for-Service	1.96%
Commercial Managed Care	39.16%
Private Pay	1.16%
Charity Care	.70%
Other	.87%

Outpatient	
Medicaid Managed Care	11.68%
Medicare Fee-for-Service	27.90%
Medicare Managed Care	3.46%
Commercial Fee-for-Service	1.16%
Commercial Managed Care	49.63%
Private Pay	4.97%
Other	1.20%

Utilization assumptions are based on 2012 levels. Expense assumptions are based on 2012 levels and the following incremental expenses: salaries and wages ($225,000); employee benefits ($53,000); reduction of professional fees of $55,000; and a reduction of other direct expenses of $184,000.

Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget indicates an excess of revenues over expenses of $7,143,369 during the first year after the disestablishment of HealthStar, Inc. The excess of revenues over expenses are consistent with historical experience. The budget appears reasonable. The applicant has indicated that there has been no historical financial assistance provided by HealthStar Network, Inc. d/b/a Stellaris Health Network.

Presented as BFA Attachment A are the 2011 and 2012 certified financial statements of White Plains Hospital Center. As shown on Attachment A, the hospital had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average excess of revenues over expenses of $4,655,310 from 2011 through 2012.

Presented as BFA Attachment B is the May 31, 2013 internal financial statement of White Plains Hospital Center. As shown, the facility had a positive working capital position and a positive net asset position through May 31, 2013. Also, the facility incurred an excess of revenues over expenses of ($406,174). The applicant has indicated that the reason for the losses were due to low volume in 2013. The applicant has indicated that the following step was implemented to improve operations: monitoring staffing and expenses to minimize the losses.

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.

Attachments

BFA Attachment A	Financial Summary- 2011 and 2012 certified financial statements of White Plains Hospital Center
BFA Attachment B	Financial Summary- May 31, 2013 internal financial statements of White Plains Hospital Center.

Public Health and Health Planning Council

Project #132026-E

Northern Westchester Hospital

County: **Westchester County**
Purpose: **Establishment**

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

Executive Summary

Description

Northern Westchester Hospital, a 233-bed not-for-profit hospital located in Westchester County, requests approval for the disestablishment of HealthStar Network, Inc. d/b/a Stellaris Health Network (Stellaris) as its active parent and co-operator. Stellaris will continue as a shared service provider under the terms of a shared Services and Operating Agreement on an interim basis until Stellaris winds down.

There are no costs associated with this project and there are no changes to staffing concurrent with the approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. The hospital is not part of an obligated group.

DOH Recommendation

Contingent Approval.

Need Summary

This facility will remain a separate not-for-profit corporation licensed under Article 28. There will be no change in either authorized services or the number of beds as a result of the proposed change in governance structure, and no need review is necessary.

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

Budget:

Revenues	$241,716,795
Expenses	232,596,068
Excess of Revenues over Expenses	$9,120,727

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of the application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed shared services and operating agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a Certificate of Amendment of the Certificate of Incorporation of Northern Westchester Hospital, acceptable to the Department. [CSL]
3. Submission of a Termination Agreement, acceptable to the Department. [CSL]
4. Submission of a Certificate of Amendment of the Certificate of Incorporation of Healthstar Network, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date 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 application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 3, 2013.

Need Analysis

Background

Northern Westchester Hospital, an existing voluntary and not-for-profit, 233-bed acute care hospital located at 400 East Main Street, Mount Kisco, 10549, in Westchester County, is seeking approval for the disestablishment of Stellaris Health Network as the active parent and co-operator of the facility.

Bed Category	Certified Capacity
Coronary Care	6
Intensive Care	10
Maternity	27
Medical/Surgical	153
Neonatal Continuing Care	5
Neonatal Intermediate Care	5
Pediatric	12
Psychiatric	15
Total	233

Northern Westchester Hospital is authorized to operate four (4) hospital extension clinics in Westchester County that provides services such as Nuclear Medicine - Diagnostic O/P, Medical Social Services O/P, Prenatal O/P, Primary Medical Care O/P, Nutritional O/P, Radiology Diagnostic O/P, Radiology Diagnostic O/P, Therapy Occupational O/P, Therapy Physical O/P, Therapy Speech Language Pathology O/P, Physical Medicine and Rehabilitation O/P, Radiology Diagnostic O/P.

The Hospital has the following State designations:

- Level 3 Perinatal Center
- Stroke Center

Recommendation

Approval is recommended.

Programmatic Analysis

Background

Northern Westchester Hospital, located at 400 East Main Street, Mount Kisco (Westchester County), New York, requests approval of the disestablishment of HealthStar, Inc. d/b/a Stellaris Health Network (Stellaris). [In separate CON Applications, White Plains Hospital Center, Lawrence Hospital Center and Phelps Memorial Hospital (#132025, 132027, and 132028, respectively), similarly request disestablishment of Stellaris.]

This project represents a corporate reorganization for the involved hospitals. Subsequent to approval, they will continue to operate as they historically have without any changes to their Operating Certificate. There will be no changes to staffing or services concurrent with approval of this application.

Character and Competence

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

Shared Services and Operating Agreement

The applicant has submitted a draft shared services and operating agreement, as summarized:

Date:	June 13, 2013, however, this Agreement shall first become effective as of the date revised Certificate of Incorporation effectuate, the removal of the Service Provider as the Sole member of each Operator.
Facilities:	Northern Westchester Hospital Association; White Plains Hospital Center; Lawrence Hospital and Phelps Memorial Hospital Association.
Service Provider:	HealthStar Network, Inc.
Services Provided:	Supply chain relationship management, oversight and reporting under the Med Assets GPO Agreements, clinical value analysis and physician preference item services; insurance function management, oversight and consulting; monitor and coordinate benefits and subrogation of claims; clinical informatics and analysis and information technology management, including pharmacy supply chain; Data Marts and data reporting services; ambulance transports, emergency preparedness, fly car system, call center and Town emergency medical technician leasing; access to information technology under existing capital lease arrangement and access to information technology support and related services from Dell and other IT services providers currently contracting with Service Provider.
Term:	The Agreement shall expire on June 30, 2018.
Fee:	$108,984,916 for all four hospitals.

The fee associated to Northern Westchester Hospital is $27,626,232.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, during the first year after the disestablishment of HealthStar, Inc., which is summarized below:

Revenues:	
Inpatient	$114,987,279
Outpatient	120,127,752
Other Operating Revenues	6,601,764
Total Revenues	$241,716,795
Expenses	
Operating	$210,539,339
Capital	22,056,729
Total Expenses	$232,596,068
Excess of Revenues over Expenses	$9,120,727
Utilization:	
Discharges	10,840
Visits	158,902

Utilization broken down by payor source during the first year for inpatient and outpatient services:

Inpatient	
Medicaid Managed Care	9.67%
Medicare Fee-for-Service	32.14%
Medicare Managed Care	6.73%
Commercial Managed Care	50.00%
Private Pay	1.46%

Outpatient	
Medicaid Managed Care	7.30%
Medicare Fee-for-Service	18.84%
Medicare Managed Care	4.34%
Commercial Fee-for-Service	20.97%
Commercial Managed Care	43.55%
Private Pay	5.00%

Utilization assumptions are based on 2012 levels. Expense assumptions are based on 2012 levels and the following incremental expenses: increase in salaries and wages of $670,000; increase of employee benefits of $187,600; and a reduction in purchased services of $1,294,300.

Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget indicates an excess of revenues over expenses of $9,120,727 during the first year after the disestablishment of the HealthStar Network. Budget assumptions are based on the historical experience of the hospital. The applicant has indicated that the hospital has not received financial assistance from HealthStar Network, Inc. d/b/a Stellaris Health Network.

Presented as BFA Attachment A are the 2011 and 2012 certified financial statements of Northern Westchester Hospital. As shown, the hospital had an average negative working capital position and an average positive net asset position from 2011 through 2012. Also, the facility achieved an average income from operations of $10,004,291 from 2011 through 2012. The applicant has indicated that the reason for the negative working capital position is that in prior years the hospital has had pension related adjustments of ($15,584,199) and ($9,398,968) during 2011 and 2012.

Presented as BFA Attachment B are the June 30, 2013 internal financial statements of Northern Westchester Hospital. As shown, the facility had a positive working capital position and a positive net asset position through June 30, 2013. Also, the hospital achieved an operating income of $2,466,146 through June 30, 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	2011 and 2012 certified financial statements of Northern Westchester Hospital
BFA Attachment B	June 30, 2013 internal financial statements of Northern Westchester Hospital.

Public Health and Health Planning Council

Project #132027-E

Lawrence Hospital Center

County: **Westchester County**
Purpose: **Establishment**

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

Executive Summary

Description

Lawrence Hospital Center, a 291-bed not-for-profit hospital located in Westchester County, requests approval for the disestablishment of HealthStar Network, Inc. d/b/a Stellaris Health Network (Stellaris) as its active parent and co-operator. Stellaris will continue as a shared service provider under the terms of a shared Services and Operating Agreement on an interim basis until Stellaris winds down.

There are no costs associated with this project and there are no changes to staffing concurrent with the approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. The hospital is not part of an obligated group.

DOH Recommendation

Contingent Approval.

Need Summary

This facility will remain a separate not-for-profit corporation licensed under Article 28. There will be no change in either authorized services or the number of beds as a result of the proposed change in governance structure, and no need review is necessary.

Program Summary

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

Financial Summary

There are no costs associated with this application.

Budget:

Revenues	$200,107,876
Expenses	189,117,332
Excess of Revenues over Expenses	$10,990,544

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed shared services and operating agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a Certificate of Amendment of the Certificate of Incorporation of Lawrence Hospital Center, acceptable to the Department. [CSL]
3. Submission of a Termination Agreement, acceptable to the Department. [CSL]
4. Submission of a Certificate of Amendment of the Certificate of Incorporation of Healthstar Network, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date 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 application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 3, 2013.

Need Analysis

Background

Lawrence Hospital Center, an existing voluntary and not-for-profit, 291-bed acute care hospital located at 55 Palmer Avenue, Bronxville, 10708, in Westchester County, is seeking approval for the disestablishment of Stellaris Health Network as the active parent and co-operator of the facility.

Bed Category	Certified Capacity
Coronary Care	10
Intensive Care	8
Maternity	23
Medical/Surgical	228
Neonatal Continuing Care	3
Neonatal Intermediate Care	7
Pediatric	12
Total	291

Lawrence Hospital Center is authorized to operate 2 hospital extension clinics in Westchester County that provide Therapy Physical O/P and Therapy Occupational O/P.

The hospital has the following designations:

- Level 2 Perinatal Center Stroke Center

Recommendation

Approval is recommended.

Programmatic Analysis

Background

Lawrence Hospital Center, located at 55 Palmer Avenue, Bronxville (Westchester County), New York, requests approval of the disestablishment of HealthStar, Inc. d/b/a Stellaris Health Network (Stellaris). [In separate CON Applications, White Plains Hospital Center, Northern Westchester Hospital, and Phelps Memorial Hospital (#132025, 132026, and 132028, respectively), similarly request disestablishment of Stellaris.]

This project represents a corporate reorganization for the involved hospitals. Subsequent to approval, they will continue to operate as they historically have without any changes to their Operating Certificate. There will be no changes to staffing or services concurrent with approval of this application.

Character and Competence

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

Shared Services and Operating Agreement

The applicant has submitted a draft shared services and operating agreement:

Date:	June 13, 2013, however, this Agreement shall first become effective as of the date revised Certificate of Incorporation effectuate, the removal of the Service Provider as the Sole member of each Operator.
Facilities:	Northern Westchester Hospital Association; White Plains Hospital Center; Lawrence Hospital and Phelps Memorial Hospital Association.
Service Provider:	HealthStar Network, Inc.
Services Provided:	Supply chain relationship management, oversight and reporting under the Med Assets GPO Agreements, clinical value analysis and physician preference item services; insurance function management, oversight and consulting; monitor and coordinate benefits and subrogation of claims; clinical informatics and analysis and information technology management, including pharmacy supply chain; Data Marts and data reporting services; ambulance transports, emergency preparedness, fly car system, call center and Town emergency medical technician leasing; access to information technology under existing capital lease arrangement and access to information technology support and related services from Dell and other IT services providers currently contracting with Service Provider.
Term:	The Agreement shall expire on June 30, 2018.
Fee:	$108,984,916 for all four hospitals. The fee associated with Lawrence Hospital is $26,411,232

.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, during the first year after the disestablishment of HealthStar, Inc.:

Revenues:	
Inpatient	$110,038,116
Outpatient	83,021,356
Other Operating Revenues	7,048,404
Total Revenues	$200,107,876
Expenses:	
Operating	$179,224,210
Capital	9,893,122
Total Expenses	$189,117,332
Excess of Revenues over Expenses	$10,990,544
Utilization:	
Discharges	12,862
Visits	83,148

Utilization broken down by payor source during the first year for inpatient and outpatient services:

Inpatient	
Medicaid Managed Care	11.79%
Medicare Fee-for-Service	31.28%
Medicare Managed Care	9.64%
Commercial Fee-for-Service	1.19%
Commercial Managed Care	43.06%
Private Pay	1.99%
Charity Care	.32%
Other	.73%

Outpatient	
Medicaid Managed Care	10.92%
Medicare Fee-for-Service	22.33%
Medicare Managed Care	5.37%
Commercial Fee-for-Service	1.08%
Commercial Managed Care	51.93%
Private Pay	4.08%
Other	3.75%
Charity Care	.54%

Utilization assumptions are based on 2012 levels. Expense assumptions are based on 2012 levels and the following incremental expenses: increase of salaries and wages ($400,000); employee benefits ($127,428); and other direct expenses ($697,310).

Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget projects an excess of revenues over expenses of $10,990,544 during the first year after the disestablishment of the HealthStar Network, Inc. Budget assumptions are based on the historical experience of the hospital. The applicant has indicated that no financial assistance has been provided historically by HealthStar Network, Inc. d/b/a Stellaris Health Network,

Presented as BFA Attachment A are the 2011 and 2012 certified financial statements of Lawrence Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the hospital achieved an average income from operations of $11,779,172 from 2011 through 2012.

Presented as BFA Attachment B is the May 31, 2013 internal financial statement of Lawrence Hospital Center. As shown, the hospital had a positive working capital position and a positive net asset position through May 31, 2013. Also, the hospital achieved an income from operations of $1,675,063 through May 31, 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2011 and 2012 certified financial statements of Lawrence Hospital Center
BFA Attachment B	Financial Summary- May 31, 2013 internal financial statements of Lawrence Hospital Center

Public Health and Health Planning Council

Project #132028-E

Phelps Memorial Hospital

County: **Westchester County**
Program: **Hospital**
Purpose: **Establishment**
Submitted: **July 10, 2013**

Executive Summary

Description

Phelps Memorial Hospital, a 238-bed not-for-profit hospital located in Westchester County, requests approval for the disestablishment of HealthStar Network, Inc. d/b/a Stellaris Health Network (Stellaris) as its active parent and co-operator. Stellaris will continue as a shared service provider under the terms of a shared Services and Operating Agreement on an interim basis until Stellaris winds down.

There are no costs associated with this project and there are no changes to staffing concurrent with the approval of this application. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in either authorized services or the number or type of beds as a result of the proposed change in governance structure. The hospital is not part of an obligated group.

DOH Recommendation

Contingent Approval.

Need Summary

This facility will remain a separate not-for-profit corporation licensed under Article 28. There will be no change in either authorized services or the number of beds as a result of the proposed change in governance structure, and no need review is necessary.

Program Summary

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

Financial Summary

There are no costs associated with this application.

Budget:

Revenues	215,295,000
Expenses	206,293,000
Excess of Revenues over Expenses	$9,002,000

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed shared services and operating agreement that is acceptable to the Department of Health. [BFA]
2. Submission of a Certificate of Amendment of the Certificate of Incorporation of Phelps Memorial Hospital, acceptable to the Department. [CSL]
3. Submission of a Termination Agreement, acceptable to the Department. [CSL]
4. Submission of a Certificate of Amendment of the Certificate of Incorporation of Healthstar Network, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date 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 application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 3, 2013.

Need Analysis

Background

Phelps Memorial Hospital Center, an existing 238-bed acute care community hospital located at 701 North Broadway, Sleepy Hollow, 10591, in Westchester County, is seeking approval for the disestablishment of Stellaris Health Network as the active parent and co-operator of the facility.

Bed Category	Certified Capacity
Chemical Dependence-Detoxification	42
Coronary Care	5
Intensive Care	8
Maternity	15
Medical/Surgical	122
Pediatric	6
Psychiatric	22
Total	238

Phelps Memorial Hospital is authorized to operate six (6) hospital extension clinics in Westchester County that provide services such as Medical Social Services O/P, Therapy - Occupational O/P, Therapy - Physical O/P, Primary Medical Care O/P, Therapy - Speech Language Pathology O/P, Audiology O/P, Certified Mental Health Services O/P, Chemical Dependence - Rehabilitation O/P, Radiology - Diagnostic O/P.

The hospital has the following State designations:

- Level 1 Perinatal Center
- Stroke Center

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Phelps Memorial Hospital Association d/b/a Phelps Memorial Hospital Center, located at 701 North Broadway, Sleepy Hollow (Westchester County) New York, requests approval of the disestablishment of HealthStar, Inc. d/b/a Stellaris Health Network (Stellaris). [In separate CON Applications, White Plains Hospital Center, Northern Westchester Hospital, and Lawrence Hospital Center (#132025, 132026, and 132027, respectively), similarly request disestablishment of Stellaris.]

This project represents a corporate reorganization for the involved hospitals. Subsequent to approval, they will continue to operate as they historically have without any changes to their operating certificates. There will be no changes to staffing or services concurrent with approval of this application.

Character and Competence

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

Shared Services and Operating Agreement

The applicant has submitted a draft shared services and operating agreement, as summarized:

Date:	June 13, 2013, however, this Agreement shall first become effective as of the date revised Certificate of Incorporation effectuate, the removal of the Service Provider as the Sole member of each Operator.
Facilities:	Northern Westchester Hospital Association; White Plains Hospital Center; Lawrence Hospital and Phelps Memorial Hospital Association.
Service Provider:	HealthStar Network, Inc.
Services Provided:	Supply chain relationship management, oversight and reporting under the Med Assets GPO Agreements, clinical value analysis and physician preference item services; insurance function management, oversight and consulting; monitor and coordinate benefits and subrogation of claims; clinical informatics and analysis and information technology management, including pharmacy supply chain; Data Marts and data reporting services; ambulance transports, emergency preparedness, fly car system, call center and Town emergency medical technician leasing; access to information technology under existing capital lease arrangement and access to information technology support and related services from Dell and other IT services providers currently contracting with Service Provider.
Term:	The Agreement shall expire on June 30, 2018.
Fee:	$108,984,916

The fee associated with Phelps Memorial Hospital is estimated at $25,661,232.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, during the first year after the disestablishment of HealthStar, Inc., which is summarized below:

Revenues:	
Inpatient	$81,311,322
Outpatient	120,334,679
Other Operating Revenues	13,648,999
Total Revenues	$215,295,000
Expenses	
Operating	$190,515,000
Capital	15,778,000
Total Expenses	$206,293,000
Excess of Revenues over Expenses	$9,002,000
Utilization:	
Discharges	8,587
Visits	203,180

Utilization broken down by payor source during the first year for inpatient and outpatient services:

Inpatient	
Medicaid Managed Care	27.15%
Medicare Fee-for-Service	36.66%
Medicare Managed Care	4.84%
Commercial Fee-for-Service	.77%
Commercial Managed Care	15.76%
Private Pay	1.45%
Charity Care	1.25%
Other	12.12%

Outpatient	
Medicaid Managed Care	16.77%
Medicare Fee-for-Service	37.17%
Medicare Managed Care	4.34%
Commercial Fee-for-Service	5.34%
Commercial Managed Care	17.80%
Private Pay	1.16%
Other	17.42%

Utilization assumptions are based on 2012 levels. Expense assumptions are based on 2012 levels and the following incremental expenses: increase in salaries and wages ($225,000); increase in employee benefits ($56,000); and an increase in professional fees ($150,000).

Capability and Feasibility

There are no project costs or working capital requirements associated with this application.

The submitted budget projects an excess of revenues over expenses of $9,092,000 during the first year after the disestablishment of the HealthStar Network, Inc. Budget assumptions are based on the historical experience of the hospital. The applicant has indicated that they have not received financial assistance historically from HealthStar Network.

Presented as BFA Attachment A are the 2011 and 2012 certified financial statements of Phelps Memorial Hospital Center. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the hospital achieved an average operating income from operations of $7,549,000 from 2011 through 2012.

Presented as BFA Attachment B is the April 30, 2013 internal financial statement of Phelps Memorial Hospital. As shown, the hospital had a positive working capital position and a positive net asset position through April 30, 2013. Also, the hospital achieved an income from operations of $1,108,000 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; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary- 2011 and 2012 certified financial statements of Phelps Memorial Hospital
BFA Attachment B	Financial Summary- April 30, 2013 internal financial statements.

Public Health and Health Planning Council

Project #132088-E

St. Lawrence Health System, Inc.

County: **St. Lawrence County**
Purpose: **Establishment**

Program: **Hospital**
Submitted: **August 6, 2013**

Executive Summary

Description

Gouverneur Hospital (GH), a proposed not-for-profit corporation, is seeking approval to become the operator of Edward J. Noble Hospital (EJNH), an existing 25-bed primary care hospital - critical care hospital in Gouverneur. Concurrently, St. Lawrence Health System, Inc. (SLHS), a proposed not-for-profit corporation, is seeking approval to become the active parent and co-operator of GH and Canton-Potsdam Hospital (CPH), an existing 94-bed community hospital. EJNH is currently operating under a management agreement with CPH. The existing management agreement will terminate upon approval of GH as the licensed operator of EJNH. GH will enter into an Administrative Services Agreement (ASA) with CPH for the provision of certain services comparable to the existing Management Agreement. Presented as BFA Attachment A is the organizational chart for SLHS as the active parent.

EJNH received primary care hospital-critical access hospital designation from the Centers for Medicare and Medicaid Services and New York State Department of Health, effective June 26, 2013, under CON 131142. EJNH is affiliated with Gouverneur Nursing Home Company, Inc., d/b/a Kinney Nursing Home, a 40-bed residential health care facility (RHCF), to which it provides management and administrative, fiscal, general and other support services. It is anticipated that Kinney Nursing Home will cease operations under a soon-to-be submitted Plan of Closure. The nursing home is not a subject of this application.

EJNH has incurred significant recurring losses from operations and working capital deficits in 2011 and 2012. In addition, the Hospital was forced to close its inpatient services by DOH for approximately three months in 2012 due to quality concerns. This application is the result of discussions among and between NYSDOH, CPH, and EJNH to try to ensure the ongoing viability of EJNH. NYSDOH has provided emergency funding to EJNH to support operations and a $9,299,198 Commissioner's Discretionary HEAL Award for debt restructuring. These, in conjunction with a collaborative relationship with CPH, and the development of a relationship with a Federally Qualified Health Center (FQHC) at the Hospital, which is being developed under CON 131251, comprise the agreed upon path to the facility's viability. On February 1, 2013, EJNH entered into a binding letter of intent with CPH and Hartland Asset Management Corporation through which EJNH would be sold to a new not-for-profit entity, Gouverneur Hospital.

SLHS will become the sole corporate member of CPH and GH. As active parent and co-operator, SLHS will have the power and authority to make decisions for its affiliates as stated in its certificate of incorporation and bylaws, and will have the active parent powers described in 10 NYCRR 405.1(c) as follows:

- Appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation
- Approval of hospital operating and capital budgets
- Adoption or approval of hospital operating policies and procedures
- Approval of certificate of need applications filed by or on behalf of the hospital
- Approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law

- Approval of hospital contracts for management or for clinical services
- Approval of settlements of administrative proceedings or litigation to which the hospital is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceed insurance coverage or any applicable self-insurance fund.

SLHS's exercise of its powers will allow SLHS to do the following for all SLHS providers:

- Formulate consistent corporate policies and procedures across the SLH system;
- Ensure a consistent approach to regulatory compliance, standards of care, and medical staff credentialing;
- Organize the network providers into an efficient and accessible continuum of care responsive to community needs;
- Collaborate in areas designed to conserve resources, such as joint purchasing;
- Facilitate clinical integration and the use of best practices;
- Share resources, and reflect common mission, philosophy, values and purposes.

DOH Recommendation

Contingent Approval

Need Summary

The establishment of Gouverneur Hospital and the creation of the St. Lawrence Health System, Inc. will allow each hospital to gain economies of scale so that they may continue serving their communities in an efficient manner while working together to meet need.

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 asset purchase price for Edward J. Noble Hospital of Gouverneur is $9,033,225 itemized as follows; $300,000 to be paid as an offset against EJNH's indebtedness to the promissory note with CPH, estimated amount of $400,000 to be paid to CPH for outstanding Management Agreement fees, and $2,500,000 to be paid to Hartland at closing, $1,500,000 equal to EJNH approximate accounts receivables. EJNH will pay Hartland an additional $4,333,225 of restricted funds provided by NYSDOH.

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

Recommendations

Health Systems Agency

The HSA recommends approval of this application.

Office of Health Systems Management

Approval contingent upon:

1. The submission of the executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
2. The submission of the executed Bill of Sale, acceptable to the Department of Health. [BFA]
3. The submission of the executed Form of Deed, acceptable to the Department of Health. [BFA]
4. The submission of the executed Intellectual Property Assignment, acceptable to the Department of Health. [BFA]
5. The submission of the executed Medical Records Custody Agreement, acceptable to the Department of Health. [BFA]
6. The submission of the executed Commissioner's Discretionary HEAL Award, acceptable to the Department of Health. [BFA]
7. Submission of evidence of site control, acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed Certificate of Incorporation of Gouverneur Hospital, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Restated Certificate of Incorporation of Canton-Potsdam Hospital, acceptable to the Department. [CSL]
10. Submission of evidence of the adoption of the amendments to the bylaws of Canton-Potsdam Hospital, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Certificate of Incorporation of St. Lawrence Health System, Inc., acceptable to the Department. [CSL]
12. Submission of a finalized and executed asset purchase agreement between Edward John Noble Hospital of Gouverneur, New York and Gouverneur Hospital, acceptable to the Department. [CSL], [BFA]
13. Submission of a signed statement, acceptable to the Department, that the proposed financial/referral structure of the applicant has been, with the consultation of legal counsel, assessed and found appropriate in light of anti-kickback and self-referral laws. [CSL]
14. Submission of a photocopy of an executed certificate of dissolution or certificate of amendment to the certificate of incorporation of Edward John Noble Hospital of Gouverneur, New York, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013.

Need Analysis

Background

Canton Potsdam Hospital (CPH) has a total of 94 beds and is certified to operate 11 extension clinics in St. Lawrence County. There are no changes in services or capacity proposed to CPH in this application.

Edward John Noble Hospital of Gouverneur (EJNH) is a 25-bed Critical Access Hospital and has four extension clinics. There will be no changes in services or capacity after EJNH becomes Gouverneur Hospital through the completion of this project.

Analysis

Table 1 shows the distribution of beds by services category for CPH and EJNHG Hospitals.

Table 1: Distribution of Certified Beds by Service Category
Source: Health Facilities Information System August 2013

Bed Category	**Canton Potsdam Hospital**	**Edward John Noble Hospital of Gouverneur**
Chemical Depend Re	17	
Chemical Depend Detox	7	
Coronary Care	4	
Intensive Care	2	
Maternity	8	
Medical /Surgical	56	25
Pediatric		
Psychiatric		
Transitional Care		
Special Use		
RHCF		
Total	**94**	**25**

Table 2 shows utilization for CPH and EJNHG for 2009, 2010, and 2011.

***Table 2: Distribution of Hospital* Utilization Statistics**
Source: SPARCS 2009 – 2011

Total inpatient discharges	**2009**	**2010**	**2011**
Canton Potsdam Hospital	4116	4144	4078
Edward John Noble Hospital of Gouverneur	1081	1191	1130

Conclusion

Approval of this application will give SLHS the ability to exercise active powers over the two hospitals and to gain oversight of day-to-day operations, while also increasing regional health planning and the opportunity for continued collaboration to meet community needs.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

There will be no change in authorized services or the number or type of beds at either Hospital as a result of the proposed changes in governance structure.

Character and Competence

The proposed board members for SLHS and Gouverneur Hospital (GH) are as follows:

SLHS	**GH**
Judy C. Chittenden	Nicholas F. Gardener, DDS
Mark J. Cornett	Stephen E. Knight
Donald R. Dangremond	Andrew F. Williams, MD
Brian D. Gardam	Michael Brackett*
Margaret E. Madden	Michael Burgess*
Edward S. Mucenski	*also member of SLHS board
Kathryn L. Mullaney	
James C. Theodore	
Michael J. Tulloch, MD	
Michael Brackett	
Michael Burgess	

All proposed board members for SLHS and GH are subject to a character and competence review. Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement:

Seller:	Edward J. Noble Hospital of Gouverneur
Buyer :	Canton-Potsdam Hospital
Purchased Assets:	All the assets, properties and rights used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, designated contracts, licenses and permits; telephone numbers, fax numbers and all logos; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party

	retroactive adjustments and related documents prior to closing.
Assumed and Excluded Liabilities:	Purchaser shall not and does not assume any liabilities of seller, whether existing or arising after closing date, except that Purchaser shall assume Seller's obligations under the Designated Contracts after the closing.
Purchase Price:	Approximately $9,033,225 itemized as follows; $300,000 to be paid as an offset against EJNH's indebtedness to the promissory note with CPH, estimated amount of $400,000 to be paid to CPH for outstanding Management Agreement fees, and $2,500,000 to be paid to Hartland at closing, $1,500,000 equal to EJNH approximate accounts receivables. EJNH will pay Hartland an additional $4,333,225 of restricted funds provided by NYSDOH.

The closing date established through the Asset Purchase Agreement is to be December 31, 2013.

The purchase price is to be paid to Hartland Asset Management Corporation in full satisfaction of all obligations and liabilities of the Hospital under the Bond and Loan Documents. Hartland Asset Management Corporation is an agent for the National Automatic Sprinkler Fund Industry Pension Fund, in connection with EJNH's obligations under a 2010 bond issuance through the St. Lawrence County Industrial Development Agency approved under CON 061201, to expand and renovate the Hospital and to satisfy certain mortgage loan payables.

In accordance with the Asset Purchase Agreement, the following draft agreements will need to be executed between EJNH and the purchaser: draft Bill of Sale, a draft Form of Deed for the real property for a price of $1, a draft form of Intellectual Property Assignment, a draft form of Medical Records Custody Agreement, and a draft form of Release to CPH.

The proposed members have submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring interest, without releasing the transferor of its liability and responsibility.

Capability and Feasibility

There will be no change in the daily operations of each health care facility, although each facility is expected to experience cost benefits from the active parent designation. Presented as BFA Attachment B is the three year budgeted summary and the first year cash flow for Gouverneur Hospital, which shows positive cash flow and a net income from operations by year three. This will be achieved by the Hospital by the addition of new medical staff coverage added in 2013, increasing utilization, the addition of the FQHC and the liquidation of the long-term debt of the Hospital.

Presented as BFA Attachment C, is the 2012/2011 certified financial summary and current internal financial summary as of June 30, 2013, for Canton-Potsdam Hospital, which shows positive working capital, net assets and a net profit from operations. Presented as BFA Attachment D is the 2012 draft and 2011 certified financial summary and current internal financial summary as of June 30, 2013, for Edward J. Noble Hospital of Gouverneur, which shows negative working capital, positive net assets and a net loss from operations. The negative working capital and net loss from operations is due to the Hospital's outstanding long-term debt when bonds were issued for the renovation and expansion of inpatient services.

This debt will be retired under the Commissioner's Discretionary HEAL Award, which currently totals $9,299,198, in which $4,000,000 will pay off the debt obligations to Hartland Management Corporation, and the remaining $5,299,198 will pay off the DASNY debt obligation for the Health Care Restructuring Pool Loan.

Designation as an active parent is expected to enhance SLHS health care facilities and contribute to a greater marketing presence for the System and its providers. Therefore, based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Proposed Organizational Chart for St. Lawrence Health System
BFA Attachment B	Gouverneur Hospital- 3 year Budgeted Summary and Cash Flow
BFA Attachment C	Financial Summary, Canton-Potsdam Hospital
BFA Attachment D	Financial Summary, Edward J. Noble Hospital of Gouverneur
BFA Attachment E	Pro-forma Balance Sheet for Gouverneur

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

September 12, 2013

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

	Number	Applicant/Facility
1.	121373 B	Lockport Ambulatory Surgery, LLC (Niagara County)
2.	131030 B	Bay Ridge Surgi-Center, LLC (Kings County)
3.	131308 B	Great South Bay Endoscopy Center, LLC (Suffolk County)
4.	132056 E	Eye Surgery Center of Westchester (Westchester County)
5.	132057 E	Queens Endoscopy ASC, LLC (Allegany County)

Public Health and Health Planning Council

Project # 121373 B
Lockport Ambulatory Surgery, LLC

County: **Niagara County**
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:

Proposed Members	Interest
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.

Recommendations

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

Office of Health Systems Management
Dispproval

Council Action Date
August 1, 2013 – Deferred

October 3, 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.

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:

Ambulatory Surgery Patients by Facility, 2012

	Patients		% of Facility's Patients		% of All Patients
	Niagara Co	All (Niagara Co and Others)	From Niagara Co	From Other Counties	Niagara Co and Others
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
Total	18,531	22,811	81.2	18.8	100

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:

Eastern Niagara Hospital (ENH) Surgical Capacity

	Rooms in Operation		
	Operating	*Procedure*	*OB Unit C-section*
Eastern Niagara Hospital Lockport Division	4	3	1
Eastern Niagara Hospital Newfane Division	2	2	0
Total	6	5	1
CON 111109-Approved ENH-ASC Extension Clinic	4	0	0
Total Capacity of ENH (upon ENH off-site ASC becoming operational)	10	5	1

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:

Surgical Patients

	Inpatient	*Ambulatory*	*Total*
ENH Lockport Division	1,140	4,018	5,158
ENH Newfane Division.	458	1,131	1,589
Total	1,598	5,149	6,747

SPARCS 2012

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.

Ambulatory Surgery for Niagara County Residents by County of Location, 2012

	Niagara Residents	*% of Total*
Niagara County Facilities	18,531	51.7%
Erie County Facilities	16,713	46.6%
Facilities in Other Counties	624	1.7%
Total Ambulatory Surgery Patients of Niagara County	35,868	100.0%

SPARCS 2012

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.

Utilization of Ambulatory Surgery Facilities in 2009-12*(SPARCS)***)**				
	All Patients (Niagara and Other Counties			
	2009	*2010*	*2011*	*2012*
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%

Utilization of Ambulatory Surgery Facilities in 2009-12 *(SPARCS)*				
	Niagara County Residents			
	2009	*2010*	*2011*	*2012*
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.

Niagara County: Population Projections					
Age Group	*2010*	*2015*	*2020*	*% Change 2015-20*	*% Change 2010-20*
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
Provisions:	Triple Net

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	1,650
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%)	235,890
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:

	Year One	Year Three
Revenues	$355,626	$561,515
Expenses:		
Operating	$151,485	$353,349
Capital	159,500	156,700
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

Sensitized Budget	Sensitized Year Three
Revenues	$456,821
Expenses:	
Operating	$337,949
Capital	156,700
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.

Attachments

BFA Attachment A Personal Net Worth Statements for the proposed members of Lockport Ambulatory Surgery Center, LLC
BFA Attachment B Pro Forma Balance Sheet of Lockport Ambulatory Surgery Center, LLC

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 -- **No Response**
621 Tenth Street
Niagara Falls, NY 14302

Facility: Mount St. Mary's Hospital and Health Center -- **No Response**
5300 Military Road
Lewiston, NY 14092

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%[1]	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 subsidy to Newfane Rehabilitation and Health Care Center, ENH's affiliated nursing home, a subsidy that has totaled $3.6 million over six years.

[1] 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 though 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 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.

Public Health and Health Planning Council

Project # 131030 B

Bay Ridge Surgi-Center, LLC

County: **Kings County**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Submitted: **January 15, 2013**

Executive Summary

Description

Bay Ridge Surgi-Center, LLC, a to-be-formed limited liability company, requests approval for the establishment and construction of a two-specialty Freestanding Ambulatory Surgical Center (FASC) to provide gastroenterology and pain management services. The center will be located in leased space on the first floor and cellar level of a recently renovated building at 370 Bay Ridge Parkway, Brooklyn. The center will consist of two procedure rooms, six exam rooms, four consulting/doctor's offices, recovery area, sterilization and soiled workrooms, and appropriate support space. The center will be staffed with three physicians; two board certified in gastroenterology and one board certified in anesthesiology.

The sole proposed member of Bay Ridge Surgi-Center, LLC is Mehrdad Hedayatnia, M.D. Dr. Hedayatnia is board certified in anesthesiology.

DOH Recommendation

Contingent approval is recommended for a limited life of five years from the date of the issuance of an operating certificate.

Need Summary

The projected volume of procedures for the proposed ASC appears reasonable, and the facility would expand access to ambulatory surgical services in a regulated Article 28 setting for the Brooklyn community.

Program Summary

A Transfer and Affiliation agreement is expected to be provided by New York Methodist Hospital.

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.

Incremental Budget	Revenues:	$2,622,189
	Expenses:	2,261,334
	Net Income:	$360,855

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval with an expiration of the operating certificate five (5) 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. Said 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 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 concluding it is concluded that proceeding with the proposal is acceptable. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed working capital loan, acceptable to the Department. [BFA]
7. Submission of a Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Submission an executed lease agreement that contains the provision required by 10 NYCRR 600.2(d) acceptable to the Department. [CSL]
9. 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 January 1, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date
October 3, 2013.

Need Analysis

Background

Bay Ridge Surgi-Center, LLC seeks approval to establish and construct a two-specialty freestanding ambulatory surgery center (ASC) at 370 Bay Ridge Parkway, Brooklyn, 11209, in Kings County.

Analysis

Currently, Kings County has 14 ambulatory surgery centers. The type of ambulatory surgery service and number of cases performed at the centers are listed below:

Existing Ambulatory Surgery Centers: Kings County. Source: SPARCS 2010 – 2011.

AS Type	Name	2010	2011
Multi - Specialty	All City Family Healthcare Center, Inc.	4,181	3,593
Single - Orthopedics	Beth Israel Amb-Surg Center-Bklyn Div	253	934
Multi - Specialty	Brook Plaza Ambulatory Surgical Center Inc	8,356	8,463
Multi - Specialty	Brooklyn Endoscopy & Ambulatory Surgery Center	3,876	4,990
Single - Ophthalmology	Brooklyn Eye Surgery Center	4,674	4,566
Single - Gastroenterology	Digestive Diseases Diagn. & Treatment Center	675	1,829
Single - Endoscopy	Endoscopic Ambulatory Spec. Ctr. of Bay Ridge	404	505
Single - Endoscopy	Endoscopic Diagnostic and Treatment Center	2,148	2,917
Single - Gastroenterology	Gastroenterology Care, Inc.	NA	247
Single - Endoscopy	Greater New York Endoscopy Surgical Center	5,491	6,792
Single - Specialty	Metropolitan Center for Digestive& Liver Diseases	NA	NA
Multi - Specialty	Millenium Ambulatory Surgery Center	NA	NA
Multi - Specialty	New York Center for Specialty Surgery	4,698	3,976
Single - Ophthalmology	Sheepshead Bay Surgery Center	3,912	4,427
	Total	38,668	43,239

Bay Ridge Surgi-Center expects 5,000 visits during the first year of operation and 6,050 by the third year of operation. Bay Ridge Surgi-Center proposes to operate Monday through Friday, from 8:00am to 6:00pm.

The participating physicians of the proposed Center are committed to performing only those cases that are appropriately performed in an ambulatory surgery center. Bay Ridge Surgi-Center indicates that it will be committed to the development of a formal outreach program directed to members of the community.

Conclusion

The projected volume of procedures for the proposed ASC appears reasonable, and the facility would expand access to ambulatory surgical services in a regulated Article 28 setting for the Brooklyn community.

Recommendation

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

Programmatic Analysis

Background

Establish and construct a dual single-specialty ambulatory surgery center.

Proposed Operator	Bay Ridge Surgi-Center, LLC
Site Address	370 Bay Ridge Parkway, Brooklyn
Surgical Specialties	Single Specialty: Pain Management and Single Specialty: Gastroenterology
Operating Rooms	0
Procedure Rooms	2 (Class A)
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	12 FTEs / 12 FTEs
Medical Director(s)	Mehrdad Hedayatnia, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by New York Methodist Hospital 4.2 miles/15 minutes
On-call service	The surgeon's contact information, as well as the Center's and back-up hospital's contact information and an after-hours contact number will all be provided to patients as part of the discharge instructions.

Character and Competence

The sole member of the LLC is:

Name	
Mehrdad Hedayatnia, MD	100%

Dr. Hedayatnia is a practicing physician who will be converting his office-based surgery practice into this ASC.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources

The facility will ensure that patients have access to primary care services through expansion of the Transfer and Affiliation Agreement with New York Methodist Hospital (NYMH) to include primary and other specialty services, as needed. Outreach to the underserved will include participation in community health events and local religious institutions to ensure the local community is aware of their services and the facility's relationship with the local hospital. A sliding fee scale will be in place for those without insurance, and provisions will be made for those who cannot afford services. While the applicant has made inquiries to NYMH to establish a mutual network relationship, there was no indication that they will become part of any Accountable Care Organization or Medical Home. The facility intends on utilizing an electronic medical record and is reviewing multiple programs at this time. Additionally, they have made

inquiries to NYMH regarding the establishment of a mutual network relationship and desire to integrate into the RHIO and/or Health Information Exchange.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 4,350 square feet of space on the first floor and cellar level of a recently renovated building located at 370 Bay Ridge Parkway, Brooklyn under the terms of the executed lease agreement summarized below:

Date:	December 17, 2012
Landlord:	370 Bay Ridge Parkway, LLC
Lessee:	Bay Ridge Surgi Center, LLC
Term:	10 years
Rental:	$126,360/year ($29 per sq. ft.)
Provisions:	The lessee will be responsible for utilities, insurance, maintenance 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. Upon approval the proposed member will continue his private practice which is located in the same building as the proposed center.

Operating Budget

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

	Year One	Year Three
Revenues:	$2,169,181	$2,622,189
Expenses:		
Operating	$1,832,396	$2,011,051
Capital	240,585	250,283
Total Expenses:	$2,072,981	$2,261,334
Net Income:	$96,200	$360,855
Utilization (procedures)	5,500	6,655
Cost per procedure:	$376.91	$339.79

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

	Year One	Year Three
Commercial Fee-for-Service	23%	23%
Commercial Managed Care	20%	20%
Medicare Fee-for-Service	40%	40%
Medicaid Fee-for-Service	2%	0%
Medicaid Managed Care	10%	12%
Self Pay	3%	3%
Charity Care	2%	2%

Expenses and utilization assumptions are based on the historical experience of the physician's 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 $376,889 based on two months of third year expenses. The applicant will finance $188,444 of working capital at an interest rate of 5% over 5 years for which a letter of interest has been provided by Capital One Bank. The remaining $188,445 will be provided as equity by the proposed member. Presented as BFA Attachment A is the net worth statement of the proposed member showing sufficient equity. Presented as BFA Attachment B is the pro-forma balance sheet of Bay Ridge Surgi-Center, LLC as of the first day of operation, which indicates positive member's equity of $188,444.

The submitted budget indicates a net income of $96,200 and $360,855 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 contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement of proposed member
BFA Attachment B	Pro-forma Balance Sheet

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: Maimonides Medical Center -- **No Response**
4802 Tenth Avenue
Brooklyn, NY 11219

Facility: Lutheran Medical Center -- **No Response**
150 55th Street
Brooklyn, NY 11219

Facility: New York Methodist Hospital -- **No Response**
506 Sixth Street
Brooklyn, NY 11203

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that the projected volume of cases for the facility is based on the actual experience of the physicians who have expressed an interest in performing procedures at the proposed facility, all of whom are based in the Southern Brooklyn community where the ASC will be located. The applicant also expects that ongoing and projected growth in ambulatory surgery in general will be a source of cases for the proposed facility.

Staff Recruitment and Retention: The applicant proposes to recruit necessary staff through a hiring program. To the extent that additional staff may be needed, the applicant is committed to not actively seek staff from local hospitals. The applicant expects to retain skilled staff through a small and close-knit working environment, competitive salary, benefits and continuing education opportunities, incentives and rewards for hard work and efficiency, and elective work schedules and focused hours of operation.

Office-Based Cases: The applicant states that approximately one-third of the projected procedures for the proposed ASC are currently performed in an office-based setting surgery 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.

Public Health and Health Planning Council

Project #131308-B
Great South Bay Endoscopy Center, LLC

County: **Suffolk County** ***Program:*** **Ambulatory Surgery Center**
Purpose: **Establishment and Construction** ***Submitted:*** **June 4, 2013**

Executive Summary

Description
GSBE, LLC, an existing limited liability company to be renamed Great South Bay Endoscopy Center, LLC requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC). Great South Bay Endoscopy Center will be certified as a single-specialty, freestanding ambulatory surgery center (FASC) in the discipline of gastroenterology.

The applicant will lease 3,200 square feet on the ground floor of an existing one story commercial medical building located at 260 Patchogue Yaphank Road, East Patchogue, NY. The site will include two procedure rooms, a pre-operating area and four recovery bays, along with the requisite support areas.

The proposed members of Great South Bay Endoscopy Center consist of five board-certified Gastroenterologists and a limited liability company, which is equally owned by two investing members, Oleg Gutnik, M.D. and Jordan Fowler. The five practicing physicians will transfer to the proposed FASC those procedures that are currently being performed in their private office-based practices, which will account for the first year's utilization of 5,250 procedures. The proposed members of Great South Bay Endoscopy Center, LLC and their ownership percentages are as follows:

Proposed Members	Membership
Howard Pastrich, M.D.	18.4%
Steven Zucker, M.D.	18.4%
Ravi Singh, M.D.	18.4%
Kevin Sano, M.D.	18.4%
Rahul Bajaj, M.D.	18.4%
Frontier Healthcare Assocs, LLC	8.0%
Jordan C Fowler 50%	
Oleg Gutnik, M.D. 50%	
Total	100.0%

Jordan Fowler and Oleg Gutnik, M.D., as members of Frontier Healthcare Associates, LLC, have an ownership interest in the following FASCs: Digestive Diseases Diagnostic & Treatment Center, LLC; Manhattan Endoscopy Center, LLC; Putnam GI, LLC d/b/a Putnam Endoscopy ASC; Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center; Queens Boulevard ASC, LLC; Flushing Endoscopy Center, LLC; Queens Endoscopy ASC, LLC; and West Side GI, LLC.

DOH Recommendation
Contingent Approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary
Great South Bay Endoscopy Center proposes to establish and construct an Article 28 single-specialty ambulatory surgery center specializing in gastroenterological procedures. It is projected that there will be 5,250 procedures in Year 1, all of which are currently being performed in the private practice offices of the participating physicians.

Program Summary
There is a Transfer and Affiliation Agreement with Brookhaven Memorial Hospital Medical Center. 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 $617,366 will be met through member's personal investment of $64,366 and the remaining $553,000 balance will be financed over five years through JP Morgan Chase Bank at a 7% interest rate.

Budget:	Revenues:	$3,399,480
	Expenses:	$2,126,470
	Gain/ (Loss)	$1,273,010

Recommendations

Health Systems Agency

There will be no HSA recommendation 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 a loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of an executed lease agreement that is acceptable to the Department of Health. [BFA]
5. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
6. 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:
    a. Data showing actual utilization including procedures;
    b. Data showing breakdown of visits by payor source;
    c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data showing number of emergency transfers to a hospital;
    e. Data showing percentage of charity care provided, and
    f. Number of nosocomial infections recorded during the year in question. [RNR]
7. 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]
8. 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]
9. Submission of evidence of site control, acceptable to the Department. [CSL]
10. Submission of evidence of authority to operate under the name of Great South Bay Endoscopy Center, LLC, acceptable to the Department. [CSL]
11. Submission of a duly executed copy of the Operating Agreement of Frontier Healthcare Associates, LLC, acceptable to the Department. [CSL]
12. Submission of an executed Amended and Restated Articles of Organization of Frontier Healthcare Associates, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-01, prior to the applicant's start of construction. [AER]
2. The applicant shall complete construction by March 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]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]

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

Council Action Date
October 3, 2013

Analysis
The service area is Suffolk County. Suffolk County has a total of six freestanding multi-specialty ASCs and three freestanding single-specialty ASCs.

Existing Ambulatory Surgery Centers: Suffolk County
Source: SPARCS 2012

ASC Type	Facility	Total Patients 2012
Gastroenterology	Digestive Health Center of Huntington, Inc.	2,959
Gastroenterology	Island Endoscopy Center, LLC	10,212
Multi-Specialty	Long Island ASC (LI Eye SC)	5,013
Orthopedics	Long Island Hand and Orthopedic Surgery Center, LLC	714
Multi-Specialty	Melville Surgery Center (LI SC)	6,088
Multi-Specialty	North Shore Surgi-Center	7,291
Multi-Specialty	Progressive Surgery Center, LLC	1,505
Multi-Specialty	South Shore Surgery Center	2,864
Multi-Specialty	Suffolk Surgery Center, LLC	1,326
Total		37,972

Additionally, there are two freestanding single-specialty ASCs specializing in gastroenterology procedures that are approved but not yet operational.

It is projected that there will be 5,250 procedures in Year 1 and 6,000 procedures in Year 3. All of the procedures are currently being performed in the private practice offices of the participating physicians. The applicant reports that there will not be any migration of cases to the proposed center from acute care hospitals.

The applicant has provided a statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws with consultation of the legal counsel. This statement is acceptable to the Department.

The applicant is committed to serving all persons in need of surgery regardless of their ability to pay or the source of payment.

Conclusion
The proposed project will bring an existing practice under Article 28 regulation.

Recommendation
From a need perspective, contingent approval is recommended.

Programmatic Analysis

Project Proposal

Great South Bay Endoscopy Center (GSBE), LLC is seeking approval to establish and construct an Article 28 single-specialty freestanding ambulatory surgery center (ASC) specializing in gastroenterological procedures.

Proposed Operator	Great South Bay Endoscopy Center, LLC
Site Address	260 Patchogue Yaphank Road, East Patchogue
Surgical Specialties	Gastroenterology
Operating Rooms	0
Procedure Rooms	2
Hours of Operation	Monday through Friday from 8:00 am to 6:00 p.m. (Extended as necessary to accommodate patient needs).
Staffing (1st Year / 3rd Year)	13 FTEs / 13.5 FTEs
Medical Director(s)	Ravi P. Singh, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Brookhaven Memorial Hospital Medical Center 0.4 miles/2 minutes
On-call service	The Center will provide patients with the number of their on-call service for use during non-operation hours.

Character and Competence

The members of the LLC are:

Name	
Howard Pastrich, MD	18.4%
Steven Zucker, MD	18.4%
Ravi P. Singh, MD	18.4%
Kevin Sano, MD	18.4%
Rahul Bajaj, MD	18.4%
Frontier Healthcare Assoc.	8.0%
Oleg Gutnick, MD (50%)	
Jordan Fowler (50%)	

Five of the members of GSBE, LLC are practicing surgeons/gastroenterologists. The fifth member, Frontier Healthcare, is comprised of a physician (Dr. Gutnick) and a businessman, Mr. Fowler, who has seven years of ASC management experience.

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. Zucker and Singh each disclosed one (1) pending malpractice claim

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 facility will ensure that patients have access to primary care services through referrals to private practicing primary care physicians or Brookhaven Memorial Hospital extension clinics. Outreach to the underserved will include participation with area community-based and institutional providers in community

outreach, education and awareness programs related to colon cancer screening and digestive health initiatives. Provisions will be made for those who cannot afford services and charity care will be provided. The facility intends on affiliating with all developing Accountable Care Organizations and/or Medical Homes and will be using an Electronic Medical Record system. Additionally, the facility intends on participating in the e-Health Network of Long Island, a RHIO serving eastern Nassau and Suffolk Counties.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Administrative Services Agreement

The applicant has submitted an executed administrative services agreement:

Dated:	April 15, 2013
Facility:	GSBE, LLC to be renamed Great South Bay Endoscopy Center, LLC
Contractor:	Frontier Healthcare Management Services, LLC
Services Provided:	Provide oversight to the following functions: staffing & scheduling; accounting, which includes: accounts payable, cashier and banking; purchasing protocols; compliance with policies & procedures; compliance with medical staff by-laws/rules; accreditation; nursing; and administration. Assess business office's policies & procedures. As directed by the company: develop payor contracting strategy, payors' credentialing, negotiate third party contracts and their renewals. Provide summary statistics of all signed contracts and the analysis of payors compliance and performance. Prepare quarterly financial reports. Recommend an annual marketing plan with corresponding budget. When requested, conduct an annual strategic planning session. Assist in the preparation of the annual business plan & budget. Provide survey tools to measure and report; patient, employee and surgeon satisfaction to the Board of Managers with follow up on negative feedback. Prepare reports for and attend Board of Managers meetings. Familiarize Center's staff with the clinical policies and procedures as adopted by the Board of Managers. In coordination with the administrator attend the following regular meetings: clinical, operations, patient care and other advisory committees and report the actions and findings of such committees to the Board of Managers. Monitor and report: clinical benchmarks; in coordination with the administrator & director of nursing monitor quality of care indicators, clinical staffing patterns and risk management program. Educate staff on regulatory and accreditation requirements. Assist the administrator in monitoring the completeness of physician credentialing statistics, files and documentation and in credentialing and re-credentialing medical staff members. Facilitate acquisition and implementation if electronic health records and its meaningful use.
Term:	1 year – renewable for one additional one (1) year term
Fee:	Annual Fee $125,000 (1/12 to be paid monthly = $10,416.67) Fee will increase by 3% per year after the first year

Billing Services Agreement

The applicant has submitted an executed billing services agreement:

Dated:	April 15, 2013
Facility:	GSBE, LLC to be renamed Great South Bay Endoscopy Center, LLC
Contractor:	Frontier Healthcare Billing Services, LLC
Services Provided:	Provide claims processing, bill submission and collection services which includes: preparation and data entry, responding to inquiries and providing follow up support on claims. Submitting bills directly to payors; bill co-payments coinsurance and deductible amounts and perform other balance billing all in accordance with the applicable laws. No adjustments to billings without owner's written authorization. Ensure that the appropriate diagnosis and procedures codes are entered on each bill. Reprocess and resubmit all claims that were improperly denied or paid. Promptly respond to inquiries from patients, third parties payors and inform owner of overpayments, disputed claims and billing errors. Follow owner's policies and procedures for handling accounts deemed uncollectible. Maintain accurate billing and collection records along with timely reporting and analysis. Provide owners with electronic access to computerized records. Ensure the records are safeguarded, and the personnel working on them have the appropriate experience and training. Allow audits and reviews to ensure that the Applicable Laws, Rules, and Regulations are being followed.
Term:	3 years
Fee:	Fee $25.00 per claim (paid monthly)

The administrative services provider, Frontier Healthcare Management Services, LLC, and the billing service provider, Frontier Healthcare Billing Services, LLC are owned by Frontier Healthcare Holdings, LLC, whose members are: Oleg Gutnik, M.D. (32.14%); Jordan Fowler (42.86%); Roy Bejarano (20%); and Billy Ingram (5%). Oleg Gutnik, M.D. and Jordan Fowler are investors in the applicant through Frontier Healthcare Associates, LLC.

Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site:

Premises:	3,200 gross square feet located at 260 Patchogue Yaphank Road, East Patchogue, New York 11772
Landlord:	MD Associates, LLC
Lessee:	GSBE, LLC to be renamed Great South Bay Endoscopy Center, LLC
Term:	10 years at $76,800 ($24.00 sq. ft.) plus an increase of 3% per year after the first year. Renewal options (2) with 5-year terms each.
Provisions:	Utilities and Taxes

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. Realtor letters have been provided attesting to the rental rate being of fair market value.

Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment is estimated at $617,366:

Renovation & Demolition	$385,000
Design Contingency	38,500
Construction Contingency	38,500
Architect/Engineering Fees	75,000
Other Fees	50,000
Movable Equipment	25,000
CON Application Fee	2,000
CON Processing Fee	3,366
Total Project Cost	$617,366

Project costs are based on a January 1, 2014 start date with a three month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	$64,366
Bank Loan (7% for a 5-year term)	553,000
Total	$617,366

A letter of interest has been provided from JP Morgan Chase Bank.

Operating Budget

The applicant has submitted first and third years operating budgets, in 2013 dollars:

	Year One	Year Three
Revenues	$2,974,790	$3,399,480
Expenses:		
Operating	$1,769,400	$1,959,050
Capital	183,198	167,420
Total Expenses	$1,952,598	$2,126,470
Net Income or (Loss)	$1,022,192	$1,273,010
Utilization: (procedures)	5,250	6,000
Cost Per Procedure	$371.92	$354.41

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

Medicaid Fee-for-Service	3.4%
Medicaid Managed Care	7.0%
Medicare Fee-for-Service	30.8%
Commercial Manage Care	54.3%
All Other	2.0%
Charity	2.5%

Utilization projections are based upon the members' current office-based practices being relocated to the FASC setting. Each practicing physicians has submitted letters in support of their projections. Expense assumptions are based upon staffing, non-staffing, and capital costs required for the provision of patient care. The breakeven point is approximately 62% of the projected volume or 3,250 procedures in the first year.

Capability and Feasibility

The total project cost of $617,366 will be satisfied by the proposed members contributing $64,366, and the balance of $553,000 being financed by JP Morgan Chase Bank at the above stated terms.

Working capital requirements are estimated at $354,411, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase Bank to finance $150,000 of the working capital with a one year payback period at an estimated 7% interest rate. The remaining $204,411 in working capital will be provided from the members own financial resources. Presented as BFA Attachment A is the applicant's personal net worth statements, which indicates there are sufficient liquid resources to meet the equity and working capital requirements. Presented as BFA Attachment B is Great South Bay Endoscopy pro-forma balance sheet that shows operations will start off with $268,777 in equity.

Great South Bay Endoscopy projects an operating excess of $1,022,192 and $1,273,010 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected rates and the payment levels for the Health Maintenance Organizations (HMO) have been determined by contracting various providers and obtaining their current rate schedules. The applicant's budgets appear to be reasonable.

Presented as BFA Attachments C through E are the 2012 internal financial summary for Digestive Disease Diagnostic & Treatment Center, LLC, 2012 draft certified financial summary for Manhattan

Endoscopy Center, LLC and Affiliate, and 2012 certified financial summary for West Side GI, LLC, respectively. Jordan Fowler and Oleg Gutnik, M.D. are investors in the above listed facilities through their ownership of Frontier Healthcare Associates, LLC. Each of the above three entities had a positive working capital position, positive net asset position and generated operating surpluses in 2012.

No financial statements are presented for the following FASC in which Jordan Fowler and Oleg Gutnik, M.D. are investors due to limited financial information because the operating certificates were either issued in 2012 or 2013: Putnam GI, LLC d/b/a Putnam Endoscopy ASC; Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center; Queens Boulevard ASC, LLC; and Flushing Endoscopy Center, LLC; and Queens Endoscopy ASC, LLC.

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 Great South Bay Endoscopy Center, LLC
BFA Attachment B	Pro-forma Balance Sheet of Great South Bay Endoscopy Center, LLC
BFA Attachment C	Internal Financial Summary for 2012, Digestive Disease Diagnostic & Treatment Center, LLC
BFA Attachment D	Draft certified Financial Summary for 2012, Manhattan Endoscopy Center, LLC and Affiliate
BFA Attachment E	Certified Financial Summary for 2012, West Side GI, LLC

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: Brookhaven Memorial Hospital Medical Center -- **No Response**
101 Hospital Road
Patchogue, NY 11772

Facility: John T. Mather Memorial Hospital -- **No Response**
75 North Country Road
Port Jefferson, NY 11777

Facility: St. Charles Hospital -- **No Response**
200 Belle Terre Road
Port Jefferson, NY 11777

Facility: Stony Brook University Hospital -- **No Response**
Health Sciences Center
Stony Brook, NY 11794

Supplemental Information from Applicant

Need and Sources of Cases: Cases will be drawn solely from the current volume of cases now done in each of the participating physicians' office-based surgery practices. Once the facility is established, the physicians will no longer be performing office-based procedures and will perform all cases at the proposed ASC. The applicant also proposes to develop a formal outreach program directed to members of the local community, including area physicians. The purpose of the program will be to inform these groups of the benefits derived from, and the latest advances made in, colon cancer screening, treatment and prevention. The proposed ASC will dedicate a portion of its revenues for the implementation of this program and for charitable care.

Recruitment and Retention of Staff: Measures to recruit and retain skilled staff and counter staff turnover will include attractive compensation and benefits packages, continuing education opportunities, recognition and appreciation programs to reward high performers, and an open work atmosphere that encourages staff involvement and continuous improvement.

Office-Based Procedures: Fully 100 percent of the projected cases for the ASC will be drawn from cases currently performed in office-based settings.

OHSM Comment

The absence of comments 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.

Public Health and Health Planning Council

Project #132056-E
Eye Surgery Center of Westchester

County: **Westchester County**
Purpose: **Establishment**

Program: **Diagnostic and Treatment Center**
Submitted: **July 19, 2013**

Executive Summary

Description
Eye Surgery Center of Westchester, Inc. (ESCW), an existing for-profit proprietary business corporation and single-specialty freestanding ambulatory surgery center located in New Rochelle, is requesting approval for a 20.25% change in stock ownership. This application proposes a change in the controlling interest among shareholders. According to the original CON application (031175), any change in controlling interest of corporate members affiliated with American SurgiSite Centers, Inc., who was the approved entity for the Administrative Services Agreement, is subject to prior approval of the Public Health and Health Planning Council. Two of the existing shareholders, Mr. deBrueys and Mr. Sheffler, have ownership interest in American SurgiSite Centers, Inc. On January 22, 2013, the Department administratively approved the initial 9.875% stock purchases by Dr. Michael Pisacano and Dr. Anthony Pisacano. Due to the size of the increase in stock ownership requested in this application, approval is now required by the Public Health and Health Planning Council. Ownership of the corporation before and after the requested change appears below.

Name	Before	After
Jay Lippman, M.D.	43.950%	31.8%
Glenn deBrueys	14.650%	10.6%
Louis Sheffler	14.650%	10.6%
Michael Pisacano,M.D.	9.875%	20.0%
Anthony Piscano,M.D.	9.875%	20.0%
Joel Greenspan,M.D.	2.000%	2.0%
Amir Yamani, M.D.	2.000%	2.0%
Deborah Lipson, M.D.	2.000%	2.0%
Bonnie Silverman,M.D.	1.000%	1.0%

In accordance with the approved subscription agreements, ESCW will transfer 20.25% of stock to Anthony Pisacano, M.D. and Michael Pisacano, M.D. equally at 10.125% each for $202,500.

DOH Recommendation
Approval

Need Summary
There will be no change in the medical operation of Eye Surgery Center of Westchester because of the proposed change in stock ownership.

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 transfer of 20.25% of stock will be purchased for a total of $405,000. It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval conditional upon:

1. The project must be completed within one year from the date 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 application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 3, 2013.

Need Analysis

Background

Eye Surgery Center of Westchester, Inc. (ESCW), an existing single-specialty ambulatory surgery center (ASC), is seeking approval for a change in stock ownership. There will be no change in authorized services as a result of the change in stock ownership thus no need review is necessary.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

Eye Surgery Center of Westchester, Inc. (ESCW), an existing, freestanding ophthalmology ambulatory surgery center, located in New Rochelle (Westchester County), seeks approval to transfer a total of 20.25% of stock to two (2) existing shareholders. On January 22, 2013, the Department administratively approved the initial 9.875% stock purchases by Dr. Michael Pisacano and Dr. Anthony Pisacano. Due to the size of the increase in stock ownership requested in this application, approval is now required by the Public Health and Health Planning Council. There is no construction or other capital costs associated with this application and there will be no change in the location or medical operation of the Center as a result of this change in stock ownership.

Character and Competence

Upon approval, the membership of ESCW will be:

Name	**Proposed Ownership**
Michael Pisacano, MD**	20.0%
Anthony Pisacano, MD**	20.0%
Jay Lipman, MD	31.8%
Glenn deBreys	10.6%
Louis Sheffler	10.6%
Joel Greenspan, MD	2.0%
Amir Yamani, MD	2.0%
Deborah Lipson, MD	2.0%
Bonnie Silverman, MD	1.0%

** Drs. Michael and Anthony Pisacano are the only members in this application who were subject to a CON Character and Competence review. They are both practicing surgeons and have been performing surgical procedures at the Center since before they became shareholders. Dr. Michael Pisacano disclosed two (2) pending malpractice cases.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Comparative Utilization

The comparative utilization for Eye Surgery Center of Westchester, Inc. between CON 031175 approval and current operations is as follows:

Payor	Approval under CON 031175	Current 1/1/13-6/30/13
Medicare Fee-for-service	40.0%	0%
Medicare Managed Care	4.0%	63.6%
Medicaid Fee-for-Service	9.0%	0%
Medicaid Managed Care	1.0%	6.2%
Commercial Fee-for-Service	8.0%	0%
Commercial Managed Care	8.0%	27.7%
Self-Pay	30.0%	0.5%
Charity Care	0.0%	2.0%

The applicant has stated that the Center is currently treating an older population and is performing fewer Lasik/Refractive surgeries, which is why the Medicare utilization has increased.

Capability and Feasibility

Each of the two shareholders will pay $202,500 to acquire 10.125% of additional shares of the corporation. Review of BFA Attachment A reveals the availability of sufficient funds from the two affected members.

BFA Attachment C presents the pro-forma balance sheet of Eye Surgery Center of Westchester, Inc. As shown, the facility will initiate operation with $869,679 shareholder's equity and an additional $405,000 in cash from the purchase of the stock transfer.

BFA Attachment B indicates that the facility generated positive working capital and member's equity and annual net income of $717,115 and $179,229 for 2012, and as of March 31, 2013, respectively.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Summary Net Worth Statement
BFA Attachment B	Financial Summary, Eye Surgery Center of Westchester, Inc., unaudited 2012 and internals as of March 31, 2013
BFA Attachment C	Pro-forma Balance Sheet

Public Health and Health Planning Council

Project # 132057 E

Queens Endoscopy ASC, LLC

County: **Queens County**
Program: **Ambulatory Surgery Center**
Purpose: **Establishment**
Submitted: **July 19, 2013**

Executive Summary

Description

Queens Endoscopy ASC, LLC (QEASC), an existing proprietary corporation, is seeking approval to transfer 29.04% membership interest to two new physician members and Frontier Healthcare Associates, LLC (FHA). Jordan Fowler and Oleg Gutnik, M.D., who are the members of FHA, will assign and transfer their individual membership interests in QEASC to FHA. The purpose of the assignment is to allow FHA to bring in additional individual members, so that their membership interest is consistent across each freestanding ambulatory surgery center associated with FHA. The Center was approved as an ambulatory surgery center for a single specialty of gastroenterology by the Public Health and Health Planning Council on August 4, 2011, under CON 111076 and began operation on April 23, 2013. The Center has a five year limited life expiring April 22, 2018.

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:

Member	Current Membership Interest	Proposed Membership Interest
Neil Brodsky, M.D.	13.790%	10.81%
Donald Palmadessa, M.D.	13.790%	10.81%
Alan Schnall, M.D.	13.790%	10.81%
Nicholas Triantafillou, M.D.	9.550%	7.49%
Arnold Asadourian, M.D.	6.380%	5.00%
Rom Gupta, M.D.	13.790%	10.81%
Arthur Vogelman, M.D.	4.500%	3.53%
James Rand, M.D.	16.980%	13.31%
Jordan Fowler	3.715%	0.00%
Oleg Gutnik, M.D.	3.715%	0.00%
Frontier Healthcare Associates, LLC	0.000%	5.81%
Kamran Nia, M.D.	0.000%	10.81%
Steven Batach, M.D.	0.000%	10.81%

The members of Frontier Healthcare Associates, LLC are Oleg Gutnik, M.D (50%) and Jordan Fowler (50%), giving them each approximately 2.905% indirect membership interest in Queens Endoscopy ASC, LLC.

DOH Recommendation

Approval

Need Summary

There are no changes in services due to this project.

Program Summary

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

Financial Summary

There are no budgeted incremental operating expenses or revenues associated with this project, since patient care services will not be affected or interrupted. The total purchase price of $86,480 will be financed from the 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 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 by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 3, 2013.

Need Analysis

Background

Queens Endoscopy ASC (QEASC) is an existing single-specialty (gastroenterology) ambulatory surgery center at 176-60 Union Turnpike, Flushing, 11366, in Queens County, which began operating on April 23, 2013 with a limited life of five years.

There will be no changes in utilization because of the proposed addition of these physicians.

QEASC projected to serve a total of 10,065 cases in Year 1 and 11,071 cases in year 3. In three months, QEASC served a total of 3,173 cases or an estimated number of 12,692 cases per year.

During these three months, the percent of Medicare cases served was 18 percent, which was close to the projected utilization of 21 percent. QEASC has exceeded its projected Medicaid utilization of 16 percent with 31 percent.

QEASC projected to provide 2.5 percent to 3.0 percent of charity care and has not yet reported the actual number of charity care cases served in three months. A formal charity care policy is being developed.

This application proposes no change in services.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

Queens Endoscopy ASC, LLC, an existing ambulatory surgery center, requests approval to transfer a portion of the Center's membership interests to three new members and remove two individual members. Other than the proposed changes in membership (and membership percentages), there are no programmatic changes proposed in this request.

The proposed new members are Kamran Nia, MD, Steven Batash, MD, and Frontier Healthcare Associates, LLC.

The following table details the proposed change in ownership:

Member Name	Current Membership Interest	Membership Interest Proposed by this Application
Neil Brodsky, M.D.	13.79%	10.81%
Donald Palmadessa, M.D.	13.79%	10.81%
Alan Schnall, M.D.	13.79%	10.81%
Nicholas Triantafillou, M.D.	9.55%	7.49%
Arnold Asadourian, M.D.	6.38%	5.00%
Rom Gupta, M.D.	13.79%	10.81%
Arthur Vogelman, M.D.	4.50%	3.53%
James Rand, M.D.	16.98%	13.31%
Jordan Fowler	3.71%	--
Oleg Gutnik, M.D.	3.71%	--
Kamran Nia, M.D.	--	10.81%
Steven Batash, M.D.	--	10.81%

Frontier Healthcare Associates, LLC Oleg Gutnik, MD 50% Jordan Fowler 50%	--	5.82%

Character and Competence

The two new proposed individual members, Dr. Nia and Dr. Batash, are physicians who are currently performing procedures at the Center. In addition, Dr. Gutnik and Mr. Fowler, who are existing members will assign and transfer their individual membership interests in the center to Frontier Healthcare Associates, LLC. Upon approval, the Center will have ten (10) physicians and one (1) LLC member.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for the two proposed individual members regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Assignment and Transfer of Interest Agreement

The applicant has submitted an executed assignment and transfer of interest agreements from Jordan Fowler and Oleg Gutnik, M.D, assigning all of their membership interests in QEASC, LLC to Frontier Healthcare Associates, LLC. The purpose of the assignment is to allow FHA to bring in additional individual members so that their membership interest is consistent across each freestanding ambulatory surgery center.

Membership Subscription Agreement

The applicant has submitted executed membership subscription agreements from the proposed new members, the terms of which are summarized below:

Date:	June 18, 2013
Purpose:	Purchase each of 10.81% membership interest
Seller:	Queens Endoscopy ASC, LLC
Purchaser:	Kamran Nia, M.D. and Steven Batach, M.D.
Purchase Price:	$43,240 each
Payment	$6,486 deposit upon execution of the subscription agreement with the remaining $36,754 due upon CON approval.

Comparative Utilization

The comparative utilization for Queens Endoscopy ASC, LLC, between original approved and current is as follows:

	Original Approved	Current as of July 31, 2013
Medicaid Fee-for-Service	1.43%	0.00%
Medicaid Managed Care	14.47%	31.00%
Medicare Fee-for-Service	19.85%	18.10%
Medicare Managed Care	1.44%	0.00%
Commercial Managed Care	60.21%	50.7%
Private Pay	0.10%	0.20%
Charity Care	2.50%	0.00%

After three months of operation, the applicant has noted that utilization by payor mix has varied between Commercial and Medicaid Managed Care based on actual visits versus originally approved budgets under CON 111076. The applicant has maintained operational profits as shown on BFA Attachment B, financial summary of Queens Endoscopy ASC, LLC. The applicant is still in the process of developing a formal charity care policy.

There are no budgeted incremental operating expenses or revenues associated with this project, since patient care services will not be affected or interrupted. The proposed new members are currently performing procedures at the Center as non-member physicians.

Capability and Feasibility

There are no project costs associated with this application.

The total purchase price of $86,480 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.

BFA Attachment B, an internal financial summary of Queens Endoscopy ASC, LLC as of July 31, 2013, indicates the facility has experienced negative working capital and equity and generated a net income of $1,708,000. The applicant has indicated the reason for the losses were start-up costs 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, and approval is recommended

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement
BFA Attachment B	Internal Financial Summary as of July 31, 2013 Queens Endoscopy ASC, LLC

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

September 12, 2013

Diagnostic and Treatment Centers - Establish/Construct **Exhibit # 7**

	Number	Applicant/Facility
1.	062287 E	SDTC – The Center for Discover Incorporated (Sullivan County)
2.	131237 E	B&L Health, Inc. d/b/a Allhealth D&TC (Kings County)
3.	131258 B	AIDS Healthcare Foundation (Kings County)
4.	131329 E	Planned Parenthood of Central and Western New York, Inc. (Erie County)
5.	131341 E	PALA Community Care, LLC d/b/a PALA Community Care (Kings County)

Public Health and Health Planning Council

Project # 062287-E
SDTC - The Center for Discovery Incorporated

County: **Sullivan** ***Program:*** **Acute Health Care**
Purpose: **Establishment** ***Submitted:*** **September 26, 2006**

Executive Summary

Description
SDTC - The Center For Discovery, Inc., a not-for-profit corporation, requests approval for indefinite life. SDTC - The Center for Discovery, Inc. is a freestanding diagnostic and treatment center located in Monticello, NY (Sullivan County). The following services are provided: audiology, physical therapy (PT), occupational therapy (OT), speech/language therapy, nursing, primary care, psychiatry, psychology, podiatry medical rehabilitation and a full range of medical specialties primarily to people with developmental disabilities.

It is noted that the project has been under review by the Department for seven years. SDTC was approved for a two-year limited life in 2000. Processing of this proposal for permanent life was suspended while SDTC was under investigation by the Commission on Quality Care and Advocacy for Persons with Mental Disabilities (CQC) for excessive executive director compensation, as well as other excessive spending on the part of the Center. This investigation started in the summer of 2006 and the application was deferred from all agendas beginning with the December, 2006 State Hospital and Review Planning Council (SHRPC) agenda. The application was again deferred from the August, 2009 SHRPC agenda due to Council members' concerns that the CQC investigation had not been finalized.

Once the CQC investigation was concluded, it was determined by the Commission that the Center needed to address 13 recommendations in order to more effectively control the financial operations of the Center. Of those, nine recommendations were immediately addressed by the Center. The remaining four recommendations were not addressed, as the facility does not believe the recommendations are valid. These remaining recommendations will not delay the application processing further, as the CQC report is considered final.

The applicant is also subject to an ongoing NYS Office for People with Developmental Disabilities (OPWDD) 2006 Consolidated Fiscal Report audit. The audit is not final. However, the draft audit indicates that there will be certain disallowances. Although the precise amount cannot be publicly released until the audit is finalized, the anticipated disallowance is not expected to unduly impact the financial feasibility of the applicant.

The application is now fully updated and can go forward with processing for indefinite life approval. As shown in both BFA Attachments A and B, the certified 2009-2011 financial statements for SDTC and the 2012 Draft financial statements for SDTC, respectively, the facility has shown that is has been able to maintain profitable operations over the course of the last four years.

DOH Recommendation
Contingent Approval.

Need Summary
SDTC-The Center for Discovery was approved for a limited life of two years under CON #002322. Per CON #002322, the projected number of visits was 25,397 in year 1 and 30,020 in year 3. In 2003, the first year of operation, SDTC exceeded its projections and provided 25,627 visits. In 2005, year 3, the applicant provided 28,588 visits, 95 percent of the projection.

Total visits ranged from 11,133 in 2009 to 12,736 in 2011. The decline in the number of visits is because in 2006, therapy visits that the Center provided to patients with disabilities began to be provided by an affiliated residential program. These services are no longer provided to residents of that facility by the Center.

Program Summary

The facility is in current compliance pursuant to 2802-(3)(e) fo the NYS Public Health Law.

Financial Summary

Per the review of the facility's most recent certified financial statements for 2009-2011, it is shown that the facility has achieved a positive net income for all three years.

	2009	*2010*	*2011*
Revenues:	$79,993,066	$88,443,543	$90,800,784
Expenses:	78,627,654	85,930,728	89,840,246
Net Income /(Loss):	$1,365,412	$2,512,815	$960,538

Based on review of the above presented financial information, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of documentation that the New York State Office for People with Developmental Disabilities has issued their final audit report and determined there are no further unresolved issues. [HSP]
2. Submission of a photocopy of the applicant's Certificate of Incorporation and any amendments thereto, which is acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's bylaws, which is acceptable to the Department.[CSL]
4. Submission of a photocopy of the lease agreement for the premises, is acceptable to the Department.[CSL]

Approval conditional upon:

1. The project must be completed within six months from the date 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 application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 3, 2013.

Need Analysis

SDTC-The Center for Discovery, Inc., an existing Article 28 diagnostic and treatment center located at 606 Old Route 17, Monticello, 12701, in Sullivan County, is requesting approval to be certified for permanent life.

SDTC was approved for a limited life of two years under CON #002322 and began providing services on February 28, 2002.

SDTC's operating certificate lists the following services: Audiology O/P, Dental O/P, Medical Social Services O/P, Nursing, Optometry O/P, Pediatric O/P, Physical Medicine and Rehabilitation O/P, Podiatry O/P, Primary Medical Care O/P, Psychology O/P, Occupational Therapy O/P, Physical therapy O/P, and Therapy- Speech Language Pathology O/P.

The service area is Sullivan County.

SDTC is located in a Health Professional Shortage Area (HPSA) for primary care and mental health services. It is also located in a Medically Underserved Area/Population for low-income.

Sullivan County has the following two diagnostic and treatment centers in addition to SDTC:
Prasad Children's Dental Health Program, Inc.: Dental O/P, and
Sullivan County Public Health Services: Clinic P/T Services

SDTC proposed to serve approximately 46 percent Medicaid patients. In Years 1 and 3, the percent of Medicaid patients served was over 46 percent and has remained so.

Total Visits including Medicaid	*Projections*		*Actual*	
	Year 1	*Year 3*	*Year 1: 2003*	*Year 3: 2005*
Total Visits including Medicaid	25,397	30,020	25,627	28,588
Medicaid Visits			14,897	16,020
Medicaid as % of Total Visits			58.1	56.0

CON #002322 was approved for a limited life to determine whether its services would be principally primary medical care or rehabilitation (neurology, G.I., pulmonology, orthopedic, ENT, dermatology, and ophthalmology) services. SDTC has continued to provide primary medical services. In 2009-11, the percent of visits for primary care services was 60 percent or higher. SDTC has also continued to provide occupational, physical, and speech therapy services. SDTC ceased providing medical rehabilitation (neurology, G.I., pulmonary, orthopedic, ENT, ophthalmology, and dermatology) in 2005.

The table below presents data on the number of projected visits and actual visits in 2009-2011.

SDTC: Projections and Actual Visits

Total Visits including Medicaid	*Projections*		*Actual*		
Proposed Services:	Year 1	Year 3	2009	2010	2011
Therapy Visits (OT, PT, ST)	18,700	21,775	1,009	1,074	771
Primary Medical Care*	591	656	7,426	7405	8864
Med. Rehab.**	810	960	n/a	n/a	n/a
All Other***	5,296	6,629	2,698	2,699	3,101
TOTAL VISITS including MEDICAID	25,397	30,020	11,133	11,178	12,736
Primary Care *(Physicians' Services as % of Total)*	2.3%	2.2%	66.7%	66.2%	69.6%
Therapy Visits *(OT, PT, ST) as % of Total*	73.6%	72.5%	9.1%	9.6%	6.1%

SDTC: Medicaid Visits					
	Projections		*Actual*		
Proposed Services:	*Year 1*	*Year 3*	*2009*	*2010*	*2011*
Therapy Visits (OT, PT, ST)			810	844	611
Primary Medical Care*			5,651	3454	3893
Med. Rehab. - Data N/A					
All Other***			1,962	1,578	1,584
Total Medicaid			8,423	5,876	6,088
Medicaid as % of Total			75.7	52.6	47.8

**2006-11: Data reported for Physicians' Services.*
***Med. Rehab. - Includes Neurology, G.I., Pulmonary, Orthopedic, ENT, Ophthalmology (if available), and Dermatology*
****All Other-Includes Audiology, Dental, Pediatric, Podiatry, Psychiatry, and Psychological Services*

Conclusion

SDTC has determined that the appropriate mix of services for their patients is primary medical care and physical, occupational, and speech therapy. The percent of Medicaid patients has been 46 percent or higher each year. The provision of therapy visits by an affiliated residential program in 2006 reduced SDTC's scope of services and volume of potential visits from 25,000 to a level in keeping with the 11,000-12,000 visit range maintained by the SDTC since 2009. In this changed circumstance, SDTC has met the terms of the limited life approval, and it is expected that this provider will continue providing health care services to the communities in Sullivan County and surrounding areas.

Recommendation

From a need perspective, approval for a permanent life is recommended.

Programmatic Analysis

Background

The Center is currently licensed to provide: Audiology, Dental, Medical Social Services, Nursing, Optometry, Pediatric, Physical Medicine and Rehabilitation, Podiatry, Primary Medical Care, Psychology, Occupational Therapy, Physical Therapy and Speech Pathology.

Character and Competence

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

In May 2010, the New York State Commission on Quality of Care and Advocacy for Persons with Developmental Disabilities issued a report, Center for Discovery: A Review of Fiscal and Governance Practices.

The principal unresolved issues identified in the report were of a fiscal nature, including: executive director's compensation, payment of unreimbursed medical expenses, and administration of petty cash fund.

On March 15, 2013, the New York State Office for People with Developmental Disabilities (OPWDD), Office of Audit Services issued a Draft Consolidated Fiscal Report Review (#11-080). The Center for Discovery responded to the Report on June 30, 2013. The response is currently under consideration by the OPWDD.

Compliance with Applicable Codes, Rules and Regulations

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.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Utilization Analysis

Utilization by payor source for the years 2009 through 2011 is as follows:

Utilization (Visits)	*Original CON Proposal (Year One)*	*2009*	*2010*	*2011*
Medicaid (Regular Clinic)	21,688	8,423	5,876	6,088
Medicare	12,690	399	1,575	1,912
Non-profit indemnity	0		1,315	1,843
Commercial indemnity	0		1,049	1,318
HMO/PHSP Other	0		701	1,036
Child Health Plus	0	283	400	351
Blue Cross	0	320	0	0
Self-Insured	0		31	0
Workers' Compensation	0			0
No Fault	0		28	10
Commercial Insurance	12,501	1,455		
Uninsured/Self Pay	475	64	58	44
Other: Community Contracted	0	189		
Government	0		145	134
Free	0			
Courtesy	0			
UCP Distribution	0			
Total	47,354	11,133	11,178	12,736

The change in utilization from originally proposed, was due to a DOH change in regulation on January 1, 2007. The new regulation required ICF residents who receive long term PT, ST and OT services to have those services provided in the ICF. Only acute PT, ST and OT can be provided for ICF residents in Article 28 clinics. The Center submitted an appeal to DOH on February 5, 2008 (Appeal #D803700) to revise the original utilization projections from 25,627 to 11,548. This revision was based on the projected PT, ST and OT services being provided in the Article 28 clinic. To note, the original approved base period (2003) was based on 25,627 units, not 40,000. Subsequently, DOH approved this change to ensure capital costs were reimbursed, and the Center was not penalized for the regulation change, since these units were included in the base period.

Payor Mix	*Original CON Proposal (Year One)*	*2009*	*2010*	*2011*
Medicaid (Regular Clinic)	45.8%	75.66%	52.57%	47.80%
Medicare	26.8%	3.58%	14.09%	15.01%
Non-profit indemnity	0%	0%	11.76%	14.47%
Commercial indemnity	0%	0%	9.38%	10.35%
HMO/PHSP Other	0%	0%	6.27%	8.13%
Child Health Plus	0%	2.54%	3.58%	2.76%
Blue Cross	0%	2.87%	0%	0%
Self-Insured	0%	0%	0.28%	0%
Workers Compensation	0%	0%	0%	0%
No Fault	0%	0%	0.25%	0.08%
Commercial Insurance	26.4%	13.07%	0%	0%
Uninsured/Self Pay	1.0%	0.58%	0.52%	0.35%
Other: Community Contracted	0%	1.70%	0%	0%
Government	0%	0%	1.30%	1.05%
Free	0%	0%	0%	0%
Courtesy	0%	0%	0%	0%
UCP Distribution	0%	0%	0%	0%
Total	100.00%	100.00%	100.00%	100.00%

In 2009, DOH changed the Medicaid Cost Report. The new Cost Report eliminated lines on which the facility had reported through 2008 on Exhibit I Schedule D, i.e. “Blue Cross/Blue Shield” and “Commercial Insurance” were eliminated, while “Community Contracted” was to be reported differently. They were replaced by new categories: “Non-Profit Indemnity”, “Commercial Indemnity”, “HMO/PHSP Other”, “No-Fault”, “Self-Insured” and “Government”. The facility had to identify which category every third party provider should be reported. Another major change required them to report all visits on Exhibit I “Sources of Payment” based upon the first payer from whom reimbursement was received. These changes were all mandated by the State and required of all providers. Consequently, the previous submission’s information and the current information do not match and, therefore, cannot be compared.

The swing in the Medicaid and Medicare/Utilization percentages and visits as shown above was due to four key factors:

- The changes made by DOH requiring visits to be recorded on the AHCF-1 based upon the first payer increased the number of Medicare visits and decreased the number of Medicaid visits.
- An increase in the numbers of patients in the residential program at the Center becoming Medicare eligible.
- An increase in the number of providers at the Center participating in the Medicare program.
- The increase in the number of community based Medicare patients.

The applicant has complied and is current with cost report requirements. Currently, there are no OMIG Medicaid audit liabilities outstanding for the facility.

BFA Attachment A are the 2009-2011 Certified financial summaries of SDTC-The Center for Discovery, Inc. As shown on Attachment A, the facility has a positive working capital and net asset position during the period 2009 through 2011. Also, during the period 2009 through 2011, the facility maintained an average net income of $1,612,922, with all three years showing a net income as seen above. BFA Attachment B are the 2012 Draft financial summaries of SDTC-The Center for Discovery, Inc. As shown on Attachment B, the facility has a positive working capital and net asset position for 2012. Also, during 2012, the facility maintained a net income of $1,376,319.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial summary, SDTC-The Center For Discovery, Inc. 2009-2011
BFA Attachment B	Draft Financial summary SDTC-The Center For Discovery, Inc. 2012

Public Health and Health Planning Council

Project #131237-E
B&L Health, Inc. d/b/a Allhealth D&TC

County: **Kings County**
Purpose: **Establishment**

Program: **Diagnostic and Treatment Center**
Submitted: **April 27, 2013**

Executive Summary

Description

B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center (Allhealth D&TC), an existing proprietary corporation that operates a diagnostic and treatment center (D&TC) requests approval to transfer the ownership of the company via a stock purchase agreement. Allhealth D&TC is located at the following addresses: 1655 East 13th Street (main site), 1100 Coney Island Avenue (extension site), and a mobile van that is also parked at the 1100 Coney Island Avenue address.

Ownership of the company before and after the requested change is as follows:

Current Operator		*Proposed Operator*	
B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center		B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center	
Ownership		Ownership	
Pinkas Lebovits, M.D.	50%	Albert Shimunov	91%
Judith Lebovits	50%	Vyacheslav Fattakhov, M.D.	9%

Allhealth D&TC has been operating since 1996, and there will not be any changes in the medical services provided as the result of this stock transfer. As background, both parties acknowledge that B&L Health, Inc. sold its clinic located at 68-60 Austin Street, Queens, New York to E&A Medical Solutions, LLC d/b/a Forest Hills Health Center, which was contingently approved by the Public Health and Health Planning Council on April 5, 2012 under CON 112261.

DOH Recommendation

Contingent Approval.

Need Summary

Under the new ownership, there will be no changes in the services being provided at these three sites.

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

Total purchase price of $1,100,000 will be met through a $950,000 personal investment from the new owners plus entering into a $150,000 promissory note with a nine month terms at no interest. There are no project costs associated with this application.

Budget:	Revenues:	$3,174,443
	Expenses:	$3,126,655
	Gain:	$ 47,788

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 contingent upon:

1. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
2. Submission of executed building subleases, acceptable to the Department of Health. [BFA, CSL]
3. Submission of a copy of the executed stock transfer certificate, acceptable to the Department of Health. [BFA]
4. Submission of an executed Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of Bylaws, acceptable to the Department. [CSL]
6. Submission of an affidavit from each applicant, acceptable to the Department. [CSL]
7. Submission of an executed Stock Purchase Agreement that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013.

Need

Program Description

Allhealth D&T Center-Brooklyn2 seeks approval for a change in ownership via a stock purchase agreement for two sites and a mobile van. All sites are currently operated by B&L Health, Inc., d/b/a Allhealth D&TC. Their locations are in Kings County as follows:

- Main Site-Allhealth D&TC-Brooklyn2:
  1655 East 13th Street, Brooklyn, 11229.
- Extension Clinic Site-Allhealth D&TC-Brooklyn: 1100 Coney Island Avenue, Brooklyn, 11230.
- Allhealth D&TC-Brooklyn-Mobile Van Site: 1100 Coney Island Avenue, Brooklyn, 11230.

Conclusion

As there are no changes in services there is no impact on need.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

Transfer of ownership via a stock transfer for two (2) sites and a mobile van operated by B & L Health, Inc., d/b/a Allhealth Diagnositic and Treatment Center. The main site is located at 1655 East 13th Street, Brooklyn, and an extension clinic (and home site for the mobile van) is located at 1100 Coney Island Avenue, Brooklyn.

Character and Competence

The proposed members of the LLC are:

Proposed	Percentage
Albert Shimunov - President	91%
Vyacheslav Fattakhov, MD – VP/Secretary	9%

Dr. Fattakhov is a practicing anesthesiologist licensed in both New York and New Jersey. Mr. Shimunov has extensive experience in the healthcare field working as a registered respiratory therapist in multiple intensive care settings. Nora Zilber, MD was identified as the Center's Medical Director under the new (proposed) operators. In keeping with past practice, disclosure information was submitted and reviewed for the Medical Director.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Stock Purchase Agreement

The applicant has submitted an executed stock purchase agreement, which is summarized as follows:

Date:	April 12, 2013
Seller:	Pinkas Lebovits, M.D. and Judith Lebovits as owners are selling B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center
Purchaser:	Albert Shimunov and Vyacheslav Fattakhov, M.D. are purchasing B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center
Acquired Assets:	Transfer, convey and deliver to the Purchasers free and clear of any Encumbrances, all right, title, and interest of such Seller in and to the Shares owned by such Seller. Plus for an additional $200 all the outstanding and issued stock in the following realty companies: PL-E 14 Realty Corp and PL-E 13 Realty Corp.
Assumed Liabilities:	Obligations arising from events occurring on or after the Effective Date. The purchase price shall be reduced by the amount of any outstanding and unpaid liabilities as of the Effective Date.
Excluded Liabilities:	Sellers shall remain responsible for Medicaid liabilities rendered before the Effective Date. An amount of $150,000 will be held in escrow for nine months after closing and then will be released to the Seller if Medicaid hasn't advised the Corporation of a claim.
Purchase Price:	$1,100,000
Payment:	$ 150,000 paid used for working capital 150,000 paid at signing of agreement 150,000 paid into escrow 500,000 due at closing 150,000 promissory note (9 month terms, no interest) $1,100,000

Presented as BFA Attachment A is the proposed stockholders' net worth summaries for B&L Health, Inc.d/b/a ALLHEALTH Diagnostic and Treatment Center, which reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Vyacheslav Fattakhov, M.D has provided an affidavit stating she is willing to contribute resources disproportionate to her interest.

Lease Rental Agreements

The applicant has submitted draft lease agreements for the proposed sites:

Premises:	3,800 sq. ft. located at 1655 East 13th Street (Lower Level), Brooklyn, New York 11229
Owner & Landlord:	SV E. 13th St. LLC
OverTenant	PL-E 13 Realty Corp
UnderTenant	B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center
Rental:	$53,472 per year for 2 years starting 7/1/13 ($14.07 per sq. ft.) and $90,000 per year starting 7/1/15 ($23.68 per sq. ft.) plus a 2% increase in annual rent starting 7/1/16
Term:	Ten-year term, Renewal option (1) for an additional10-year term
Provisions:	Utilities, Real Estate Taxes, Insurance, and Repairs

Premises:	3,700 sq. ft. located at 1655 East 13th Street (Upper Level), Brooklyn, New York 11229
Owner & Landlord:	SV E. 13th St. LLC
OverTenant:	PL-E 14 Realty Corp
UnderTenant:	B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center
Rental:	$87,996 per year for 2-years is starting 7/1/13 ($23.78 per sq. ft.) and $90,000 per year starting 7/1/15 ($24.32 per sq. ft.) plus a 2% increase in annual rent starting 7/1/16
Term:	Ten-year term, Renewal option (1) for an additional 10-year term
Provisions:	Utilities, Real Estate Taxes, Insurance, and Repairs

Premises:	3,200 sq. ft. located at 1100 Coney Island Avenue (2nd Floor), Brooklyn, New York 11230
Owner & Landlord:	Coney Island Properties, LLC
OverTenant	B & L Realty Corp
UnderTenant	B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center
Rental:	$84,218 per year starting 4/13/13 ($26.32 per sq. ft.)
Under tenant	B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center
Term:	Lease ends 3/31/16, Renewal option (1)for an additional 5-year term
Provisions:	Utilities, Real Estate Taxes, Insurance, and Repairs

The leases are arm's length arrangements between the Landlord and the Over and Under Tenants. Realtor letters have been provided attesting to the rental rate being of fair market value.

Operating Budget

The applicant has submitted first year's operating budget, in 2013 dollars, as summarized below:

	Current Year	Incremental	Year One
Revenues:			
Commercial Fee-for-Service	$0	$253,955	$253,955
Medicare Fee-for-Service	$0	$139,675	$139,675
Medicare Managed Care	$0	$209,513	$209,513
Medicaid Fee-for-Service	$1,009,577	($374,689)	$634,888
Medicaid Managed Care	$0	$1,745,942	$1,745,942
Private Pay	$0	$190,470	$190,470
Charity Care	$0	$0	$0
Total Revenues	$1,009,577	$2,164,866	$3,174,443
Expenses:			
Operating	$1,133,498	$1,662,857	$2,796,355
Capital	$254,463	$75,837	$330,300
Total Expenses	$1,387,961	$1,738,694	$3,126,655
Revenues over Expenses (Loss)	$(378,384)	$426,172	$47,788
Utilization: (treatments)	8,054	19,066	27,120
Cost Per Treatment	$172.33	$91.19	$115.29

Utilization by payor source for the current year, and the first year subsequent to the change in operator, is summarized below:

	Current Year	Year One
Medicaid Fee-for-Service	100%	20%
Medicaid Manage Care		55%
Medicare Fee-for-Service		4%
Medicare Manage Care		6%
Commercial Fee-for-Service		7%
Private Pay & All Other		5%
Charity Care		3%

According to the applicant, when Allhealth D&TC was first established, the current owner encountered numerous obstacles in developing contracts with insurers primarily due to his lack of understanding of the structure and licensure for an Article 28 D&TC. In order to provide access to the service area's population, Dr. Lebovits formed A Amerimed, PC, a private medical practice solely owned by Dr. Lebovits, to contract directly with the commercial insurers and Medicare. The transfer of Allhealth D&TCs ownership includes the physicians who are now employed or contracted by A Amerimed, PC. These are the same physicians that currently provide services under contract at Allhealth D&TC. In 2011and 2012, these physicians performed 18,194 and 18,957 procedures at A Amerimed PC, respectively. There are letters from eleven of the current physicians' supporting the transfer of 16,952 procedures from A Amerimed PC to Allhealth D&TC. Some additional patient volume is anticipated due to improved management practices, marketing initiative and more active community outreach efforts. It appears that the facility will be operating slightly above the breakeven point in year one as shown above.

The main difference between the current owner's $378,384 loss and the new owners' $47,788 first year profit stems from the current owner's related-party transactions. They include $312,600 paid to a related entity for management services and $162,610 in interest expense for advances by the current owner. The new owner will not incur either of these expenses, saving about $475,210 per year. The new proposed owners are currently involved in Allhealth D&TCs day-to-day operation and are actively involved in negotiating payer contracts, evaluating potential cost saving initiatives and streamlining operations at each site.

Capability and Feasibility

Total purchase price of $1,100,000 will be met through a $950,000 personal investment equity from the new owners, plus entering into a $150,000 promissory note with nine month terms at no interest. Review of BFA Attachment A is the proposed stockholders' net worth summaries for B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center, which reveals sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Vyacheslav Fattakhov, M.D has provided an affidavit stating she is willing to contribute resources disproportionate to her interest. There are no project costs associated with this application.

Working capital is estimated at $521,109 and is based on two months of first year's expenses of which $150,000 has already been provided. The remaining balance of $371,109 will be satisfied from the member's liquid resources. Review of Attachment A summary of net worth reveals sufficient resources for working capital equity. Presented as BFA Attachment B is the pro-forma balance sheet that shows operations will start off with $1,471,109 in equity.

The first year's financial projections show a net income of $47,788. Revenues reflect current reimbursement methodologies for Medicaid and Medicare and commercial revenues were based on experience. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements
BFA Attachment B	Pro-forma Balance Sheet for B&L Health, Inc. d/b/a ALLHEALTH Diagnostic and Treatment Center

Public Health and Health Planning Council

Project # 131258-B

AIDS Healthcare Foundation

County: **Kings County**
Purpose: **Establishment and Construction**
Program: **Diagnostic and Treatment Center**
Submitted: **May 8, 2013**

Executive Summary

Description

AIDS Healthcare Foundation, an existing California not-for-profit corporation, requests approval for the establishment of an Article 28 diagnostic and treatment center (D&TC) to provide primary medical care to persons living with HIV/AIDS. The center will be located in approximately 4,085 square feet on the second floor of an existing building located at 475 Atlantic Avenue, Brooklyn. The center will consist of six exams rooms, appropriate support space, public and private restrooms, administrative offices, storage areas, staff lounge, soil rooms and a dedicated waiting area.

AIDS Healthcare Foundation will be managed and governed solely by a board of directors and will be under the medical direction of Alan J. Stein, M.D. Presented as BFA Attachment A, is the organizational chart for the AIDS Healthcare Foundation.

DOH Recommendation

Contingent Approval.

Need Summary

It is projected that there will be 6,125 visits in Year 1 and 8,100 visits in Year 3. The proposed location is in an underserved area.

Program Summary

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

Financial Summary

Total project costs of $838,325 will be met with equity from the applicant.

Incremental Budget:	Revenues:	$1,193,338
	Expenses:	844,330
	Net Income:	$349,008

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]
3. Submission of a fully executed Lease, that is acceptable to the Department. [CSL]
4. Submission of Policies, Procedures and staff training materials that address PHL 27F, acceptable to the Department. Materials should include an HIV compliant Release of Information form. [AID]
5. Submission of Policies and Procedures for language access as required by 10 NYCRR 751.5(a)(2), acceptable to the Department. HHS Guidelines may be used for the formulation of the Policies and Procedures. [AID]
6. Submission of a document reflecting the integration of New York City and New York State HIV Clinical Guidelines into the medical practice. These clinical guidelines are used to assess the quality of HIV care delivered across New York State through electronic submission to the HIVQUAL program, which is required. [AID]

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 March 1, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

October 3, 2013.

Need Analysis

Background

AIDS Healthcare Foundation will primarily serve persons living with HIV/AIDS (PLWHA) who, at present, are not receiving primary medical care, including the newly diagnosed and individuals who have never been in care or have dropped out of care.

The service area includes zip codes in Northwest Brooklyn-11217, 11201, 11205, 11215, 11231, and 11251; these neighborhoods are Brooklyn Heights, Carroll Gardens, Clinton Hill, Downtown, Fort Greene, Park Slope, and Red Hook. The service area also includes zip codes 11212, 11213, 11216, 11225, 11233, and 11238 in Central Brooklyn comprising the neighborhoods of Bedford-Stuyvesant, Crown Heights, Prospect Heights, and Brownsville.

The proposed location is in a Health Professional Shortage Area for primary care services and is a Medically Underserved Area.

The 2008-10 rates for HIV and AIDS for Kings County were significantly higher than those for the State as a whole.

2008-10 Rates per 100,000 Population Source: NYSDOH	Kings County	New York State
HIV	38.3	21.4
AIDS	32.8	17.6

Prevention Quality Indicators(PQIs)

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

PQI Rates-Hospital Admissions per 100,000 Adult, Source: NYSDOH-PQI

PQI Rates	Zip codes 11217, 201, 205, 215, 231, 251, 212, 213, 216, 225, 233, and 238 Combined	NYS
All Acute	556	526
All Circulatory	705	456
All Diabetes	485	224
All Respiratory	551	357
All Above	2,311	1,563

Nine hospitals and one hospital extension clinic have AIDS services, an AIDS Center, and /or an AIDS Home Care Program in Kings County. None of these are in zip code 11217, where AHF is proposed to be located.

A total of 40 freestanding D&TCs provide health fairs, primary medical care O/P, and/or psychology O/P services in Kings County. Of these 40 D&TCs, Brooklyn Plaza Medical Center, in zip code 11217, HHC Cumberland, and HHC East NY serve the PLWHA population. (Source NYSDOH – AIDS).

AIDS Healthcare Foundation is committed to serving all patients in need without regard to the source of payment.

Conclusion

AIDS Healthcare Foundation will increase access to needed services for PLWHA in Brooklyn, where HIV and AIDS case rates are significantly higher than those for the State.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Program Description

AIDS Healthcare Foundation (AHF), currently operating health centers in six states and the District of Columbia, seeks approval to establish and construct a diagnostic and treatment center to provide primary care services to persons living with HIV/AIDS in New York.

Proposed Operator	AIDS Healthcare Foundation (AHF)
Site Address	475 Atlantic Avenue, Brooklyn
Hours of Operation	Monday through Friday from 8:30 am to 5:30 pm, with the exception of one day per week when the center will remain open until 8:30 pm (day to be determined)
Staffing (1st Year / 3rd Year)	6.2 FTEs / 8.0 FTEs
Medical Director(s)	Alan J. Stein, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Brooklyn Hospital Center – Downtown Campus 1 mile/6 minutes away
On-call service	After hours on-call service will be provided to patients 24 hours a day, 365 days a year.

Character and Competence

AIDS Healthcare Foundation is a not-for-profit corporation. The members of the AHF Board (with their respective positions) are listed below.

Name	
Rodney Wright, MD	Chair, Board of Directors
Cynthia Davis, MPH	Domestic Vice Chair
Diana G. Hoorzuk	Global Vice Chair
Lawrence Peters	Treasurer
Scott Galvin	Secretary
William Arroyo, MD	Member
Mary Ashley, RN, MPH	Member
Curley Lee Bonds II, MD	Member
Judith Briggs Marsh	Member
Steve Carlton, Esq.	Member
Condessa Curley, MD, MPH	Member
Agapito Diaz, Ed.M, MPA	Member
Elizabeth Mendia, Ed.M.	Member
Angelina Wapakabulo	Member
Michael Weinstein	Member, AHF President
Anita Ann Williams, RN, BSN	Member

The proposed board members have all been involved with the AIDS Healthcare Foundation's (AHF's) operations in other states/countries. Dr. Rodney Wright is a practicing physician who is currently the Director of HIV programs in the Department of Obstetrics & Gynecology and Women's Health at the Montefiore Medical Center. Ms. Davis has nearly 20 years' experience as an assistant professor at a private, non-profit medical school and Ms. Hoorzuk has a nearly 40 year work history with a company that specializes in paralegal work. Mr. Peters has over 15 years of marketing and management experience and Mr. Galvin has over 12 years' experience in the field of education.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

AIDS Healthcare Foundation disclosed that they are currently involved as defendants in three pending actions: (1) AHF filed a whistleblower suit alleging causes of action for 1st Amendment retaliation and declaratory relief. County defendants filed counterclaims against AHF alleging breach of contract and declaratory relief. (2) An ex-employee from an AHF thrift store in Florida filed a discrimination suit for wrongful termination. (3) An individual filed a case against AHF alleging misappropriation and commercial use of likeness, invasion of privacy and unfair business practices related to a public service video produced by AHF.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease the entire building located at 475 Atlantic Avenue in Brooklyn. The proposed Article 28 D&TC will occupy approximately 4,085 square feet on the second floor of the building under the terms of the executed lease agreement summarized below:

Date:	March 21, 2012
Landlord:	MBH Atlantic, LLC
Lessee:	AIDS Healthcare Foundation
Term:	10 years with the option to renew for an additional five years.
Rental:	$141,667/year increasing 4% annually
Provisions:	The lessee will be responsible for taxes, insurance, utilities and maintenance.

The applicant has indicated that the lease will be an arm's length agreement and letters of opinion from licensed commercial real estate brokers have been submitted indicating rent reasonableness. The first floor is occupied by a pharmacy, also operated by AIDS Healthcare Foundation, and the third floor is occupied by an unrelated party with an existing lease that is subject and subordinate to this lease.

Total Project Cost and Financing

Total project cost for renovations is $838,325, itemized as follows:

Renovation and Demolition	$641,680
Design Contingency	64,168
Construction Contingency	64,168
Architect/Engineering Fees	51,334
Consultant Fees	10,400
Application Fee	2,000
Additional Processing Fee	4,575
Total Project Cost	$838,325

Project cost is based on a January 1, 2014 construction start date and a two month construction period, which will be funded with equity from the applicant.

Operating Budget

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

	Year One	Year Three
Revenues:	$902,335	$1,193,338
Expenses:		
Operating	534,122	667,548
Capital	169,611	176,783
Total Expenses:	$703,732	$844,330
Net Income	$198,603	$349,008
Utilization: (visits)	6,125	8,100
Cost per visit	$114.90	$104.24

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

	Year One & Year Three
Commercial Fee-for-Service	10%
Medicare Fee-for-Service	20%
Medicare Managed Care	2%
Medicaid Managed Care	60%
Private Pay/Other	6%
Charity Care	2%

Expense and utilization assumptions are based on the geographical area and the historical experience of AIDS Healthcare Foundation.

Capability and Feasibility

Total project costs of $838,325 will be met with equity from the applicant. Presented as BFA Attachment B is the financial summary of AIDS Healthcare Foundation, which indicates the availability of sufficient funds.

Working capital requirements are estimated at $140,722 based on two months of third year expenses and will be provided through the existing operation. Presented as BFA Attachment C is the pro-forma balance sheet for the AIDS Healthcare Foundation as of the first day of operation, which indicates positive net assets of $137,608,480

The submitted budget indicates an incremental net income of $198,603 and $349,008 for the first and third years of operations, respectively. Revenue is based on current payment rates for diagnostic and treatment centers. The budget appears reasonable.

As shown on BFA Attachment B, a financial summary for the AIDS Healthcare Foundation indicates that the facility has maintained positive working capital, net assets, and generated a positive change in net assets of $29,279,058 as of December 31, 2012. As of May 31, 2013 the facility has maintained positive working capital, net assets, and generated a positive change in net assets of $11,798,360.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary, AIDS Healthcare Foundation
BFA Attachment C	Internal Financial Summary as of May 31, 2013, AIDS Healthcare Foundation
BFA Attachment D	Pro-forma Balance Sheet

Public Health and Health Planning Council

Project #131329-E
Planned Parenthood of Central and Western New York, Inc.

County: **Erie County**
Purpose: **Establishment**

Program: **Diagnostic and Treatment Center**
Submitted: **June 18, 2013**

Executive Summary

Description
This application requests approval to merge Planned Parenthood of Rochester/Syracuse Region, Inc. (PPRSR) and Planned Parenthood of Western New York, Inc. (PPWNY) into one surviving corporation which will be renamed Planned Parenthood of Central and Western New York, Inc. (PPCWNY)

PPRSR and PPWNY, both not-for-profit corporations, are affiliates of the Planned Parenthood Federation of America. PPRSR operates one diagnostic and treatment center and four extension clinics and PPWNY operates one diagnostic and treatment center and five extension clinics including a mobile van. Both entities offer reproductive health care, counseling and referral. PPCWNY will operate all centers currently operated by the constituent corporations without any significant changes in service.

The applicant states that the proposed merger would better serve the current and future needs of the respective communities currently served by the existing corporations. The merger is anticipated to expand the applicant's fund raising capacity and bring together a talented diverse staff, while retaining local control and personal service.

DOH Recommendation
Contingent Approval

Need Summary
The merger will allow the organizations to collaborate and maximize the resources of the two agencies. In addition, PPCWNY expects the merger will result in an overall reduction in senior staff costs, enhanced fundraising capabilities, improved purchasing and vendor services, and a stronger organization with a long term future.

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 costs associated with this application.

There are no budgeted incremental operating expenses or revenues associated with this project since patient care services will not be affected or interrupted.

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 lease amendments providing site control for at least five years that are acceptable to the Department of Health. [BFA, CSL]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013.

Need Analysis

Background

The applicant seeks approval to merge Planned Parenthood of Western NY, Inc. and Planned Parenthood of the Rochester/Syracuse Region Inc. (PPRSR) into a single entity.

Analysis

The entities have the following certified services:
Planned Parenthood of Western NY, Inc.:
Family Planning O/P; and
Primary Medical Care O/P.

Planned Parenthood of the Rochester/Syracuse Region Inc.:
Abortion O/P;
Clinic Part Time Services;
Family Planning O/P; and
Prenatal O/P.

Both entities offer reproductive health care services, including annual examinations, pap tests, breast and cervical cancer screening, HIV testing, counseling and referral, abortion services and all FDA-approved methods of birth control.

The relevant service areas are the following counties:
Cattaraugus, Cayuga, Chautauqua, Erie, Genesee, Monroe, Niagara, Onondaga, Ontario, Orleans, Oswego, Seneca, Wayne, and Wyoming.

In 2010, the total population of the 14 counties in the service area was approximately 3.1 million residents; of these, 51.3 percent were female. The applicant indicated the two entities recorded more than 52,000 visits in 2012; 93 percent of which were female and 7 percent were male. PPWNY's clinical services are designed to reduce barriers to care by providing appointment access through a call center, flexible appointments options, including walk-in services, on-site access to screening for several public assistance programs, laboratory and some pharmacy services, and referrals for care that falls outside the family planning arena.

Conclusion

A merger of the two affiliates would assure a secure long term future and enhance the organization's ability to continue its mission in the communities that it serves.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Planned Parenthood of Rochester/Syracuse Region, Inc., which operates one diagnostic and treatment center (D&TC) and four extension clinics, proposes to merge into Planned Parenthood of Western New York, which operates one D&TC and five extension clinics including a mobile van. The surviving entity is to be renamed Planned Parenthood of Central and Western New York, Inc. (PPCWNY). While there will be no changes in clinic sites or current services, the merger will permit a reduction in senior staff costs, enhanced fundraising capabilities, more efficient purchasing and vendor services, and allow for comprehensive strategic planning.

Character and Competence

The Board of Directors of the merged entity (PPCWNY) will combine the existing boards of the two merging entities. The post-merger Board of Directors will be comprised of thirty-one (31) individuals who share ties to the communities served and have a history of commitment to Planned Parenthood's mission. Board Officers have been identified as:

Name	**Position**
Sarah Fallon	Chair
Elizabeth Clark	Vice-Chair
Stephanie Malinenko	Secretary
Carima El-Behairy	Treasurer

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Plan of Merger

Under the proposed plan of merger, the constituent corporations will merge into one surviving corporation which will be named Planned Parenthood of Central and Western New York, Inc. The board of directors will initially combine the boards of the constituent corporations. The board of directors of the surviving corporation, in accordance with the bylaws, will elect future board members. Presented as BFA Attachment A is the organizational chart of Planned Parenthood of Central and Western New York, Inc. 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.

Lease Rental Agreements

The applicant has provided the location of the sites it leases, summarized below:

Planned Parenthood of Rochester/Syracuse Region, Inc.

Address:	3,000 sq. ft. located at 15 LaFayette Avenue, Canandaigua
Lessor:	Next Phase Plan, LLC
Rental:	$55,428/year
Term:	22 months ending April 30, 2015 with the option to renew for an additional five years.

Planned Parenthood of Western New York, Inc.

Address:	15,750 sq. ft. located at 2697 Main Street, Buffalo
Lessor:	FBBT/US Properties, LLC
Rental:	$145,992/year
Term:	3 years ending July 31, 2014

Address:	5,000 sq. ft. located at 732 Portage Road, Niagara Falls
Lessor:	1093 Group, LLC
Rental:	$48,000/year
Term:	10 years ending March 31, 2019

Address:	4,200 sq. ft. located at 240 Center Road, West Seneca
Lessor:	Bueme Development
Rental:	$51,000/year
Term:	4 years ending December 31, 2016

Address:	2,900 sq. ft. located at 15 Webster Street, North Tonawanda
Lessor:	Fleischer & Burgio
Rental:	$44,076/year
Term:	3 years ending April 30, 2014

Pursuant to Not-for-Profit Corporation Law 905(b)(3), when an entity merges, the surviving entity automatically assumes all the liabilities of the absorbed entity including leases, therefore no assignment is required.

Operating Budget

The applicant has indicated there are no incremental operating expenses or revenues associated with this project since patient care services will not be affected or interrupted.

Capability and Feasibility

There is no consideration for the merger, other than the assumption of liabilities of the merging entities. Presented as BFA Attachment B is the pro-forma balance sheet which indicates Planned Parenthood of Central and Western New York, Inc. will initiate operations with a positive net asset position of $10,701,856. The pro-forma balance sheet is based on 2012 certified financial statements for each facility.

BFA Attachment C, a financial summary for Planned Parenthood of Rochester/Syracuse Region, Inc., indicates that the facility has maintained positive working capital and net assets and experienced net income from operations of $103,662. BFA Attachment D, a financial summary for Planned Parenthood of Rochester/Syracuse Region, Inc. as of May 31, 2013, shows the facility has maintained positive working capital and net assets and generated a net income of $137,000 after investments are accounted for.

BFA Attachment E, a financial summary for Planned Parenthood of Western New York, Inc., indicates that the facility has maintained positive working capital and net assets and generated net income of $29,445 after contributions are taken into account. BFA Attachment F, a financial summary for Planned Parenthood of Western New York, Inc. as of June 30, 2013, shows the facility has maintained positive

working capital and net assets and experienced a loss of $250,000. The loss is due to the implementation of their electronic medical records.

In anticipation of the merger both operations are currently undergoing a Planned Parenthood Federation of America review to increase productivity and efficiency.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary, Planned Parenthood of Rochester/Syracuse Region, Inc.
BFA Attachment D	Internal Financial Summary as of May 31, 2013, Planned Parenthood of Rochester/Syracuse Region, Inc.
BFA Attachment E	Financial Summary, Planned Parenthood of Western New York, Inc.
BFA Attachment F	Internal Financial Summary as of June 30, 2013, Planned Parenthood of Western New York, Inc.

Public Health and Health Planning Council

Project #131341-E
PALA Community Care, LLC d/b/a PALA Community Care

County: **Kings County**
Purpose: **Establishment**

Program: **Diagnostic and Treatment Center**
Submitted: **June 26, 2013**

Executive Summary

Description
PALA Community Care, LLC d/b/a PALA Community Care is requesting to be established as the operator of the main site of Brooklyn Medcare, an existing Article 28 Diagnostic & Treatment Center (D&TC) and proprietary business corporation, located at 1110 Pennsylvania Avenue in Brooklyn. The D&TC currently provides and is certified for the following services; primary medical care, medical rehabilitation, physical therapy and podiatry. The extension clinic at 445 Kings Highway will continue to be operated by New York United Healthcare, LTD d/b/a/ Brooklyn Medcare.

The proposed members of PALA Community Care, LLC are as follows: Alexander Goldshmidt (20%), Henry Sadar, DO (20%), Polina Vainer (40%) and Alex Vaysbaum (20%).

DOH Recommendation
Contingent Approval.

Need Summary
This facility currently offers therapy type services and some primary medical care on an outpatient basis. Because this application proposes no change in services, no need review is necessary.

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 proposal.

Budget:	Revenues:	$3,594,373
	Expenses:	$3,360,157
	Gain:	$ 234,216

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed working capital loan that is acceptable to the Department of Health. [BFA]
3. Submission of an executed bill of sale that is acceptable to the Department of Health. [BFA]
4. Submission of an executed sub-lease assignment agreement that is acceptable to the Department of Health. [BFA]
5. Submission of an executed contract assignment agreement that is acceptable to the Department of Health. [BFA]
6. Submission of an executed escrow agreement that is acceptable to the Department of Health. [BFA]
7. Submission of a photocopy of an executed Restated Articles of Organization of PALA Community Care, LLC. [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]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

October 3, 2013.

Need Analysis

Background

PALA Community Care is seeking approval to become the established operator of one site of Brooklyn Medcare, an existing Article 28 diagnostic and treatment center (D&TC), located at 1110 Pennsylvania Avenue, Brooklyn, 11207, in Kings County. The second Brooklyn Medcare site, located at 445 Kings Highway, Brooklyn, 11223, in Kings County, will continue to be operated by the current operator.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

PALA Community Care, LLC, d/b/a PALA Community Care, is proposing to be established as the operator of the main site of Brooklyn Medcare, an existing Article 28 diagnostic and treatment center. (Brooklyn Medcare's Kings Highway site will continue to be operated by its current operator.) The applicant expects to maintain focus on primary and preventive medical care while broadening the scope of services to encompass a wide range of primary care and specialty medical services.

Proposed Operator	PALA Community Care, LLC
Doing Business As	PALA Community Care
Site Address	1110 Pennsylvania Avenue
Specialties	Primary Medical Care Physical Therapy Podiatry Physical Medicine and Rehabilitation
Hours of Operation	Monday through Saturday from 7:00 am to 10:00 pm and on Sunday from 12:00 pm to 10:00 pm.
Staffing (1st Year / 3rd Year)	23.5 FTEs/26.0 FTEs
Medical Director(s)	Aleksandr Livshits, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by Brookdale University Hospital; 1.8 miles and 7 minutes

Character and Competence

The members of the LLC are:

Name		
Polina Vainer	40%	Member/Manager
Alex Vaysbaum	20%	Member/Manager
Alexander Goldshmidt	20%	Member
Henry Sardar, DO	20%	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.

Dr. Sardar disclosed one pending civil action involving a breach of contract claim brought about by a former employee.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The change in ownership will be effectuated in accordance with an executed asset purchase agreement, the terms of which are summarized below:

Date:	March 15, 2013
Seller:	United Healthcare, LTD d/b/a Brooklyn Medcare
Purchaser:	PALA Community Care, LLC
Purchased Assets:	All assets used in business and operation of the center, tenants position in the assignable lease, all equipment and inventory, contracts, licenses and permits and telephone numbers.
Excluded Assets:	Personal property
Liabilities Assumed:	Liabilities assumed in relation to the assumed assets
Purchase Price:	$750,000
Payment of Purchase: Price:	A deposit of $250,000 to be held in escrow with the remaining $500,000 to be paid at closing with the understanding that of which $200,000 will be paid to OMIG as a settlement amount by and between seller.

As a condition of the executed asset purchase agreement, seller and purchaser will enter into a proposed Bill of Sale acknowledging the receipt of the transferred assets and a proposed escrow agreement acknowledging the escrow agent and operation of the escrow.

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.

Assignment and Assumption of Lease Agreement and Contracts

The original lease is between NBO Realty, Inc. and United Healthcare Management, Inc. commencing on February 1, 2006 for 3,300 square feet for a five year term with optional renewals and has been renewed until January 31, 2026 with a 3% increase in rent each year. The tenant is responsible for maintenance, utilities, insurance and taxes.

The proposed assignment and assumption of the lease agreement and contracts is between the seller, United Healthcare, LTD d/b/a Brooklyn Medcare and purchaser, PALA Community Care, LLC and is acknowledged through the executed Asset Purchase Agreement.

The applicant has indicated that there is no common membership interest between the landlord and lessee. Therefore, the lease will be an arm's length agreement and letters of opinion from licensed commercial real estate brokers have been submitted indicating rent reasonableness.

Operating Budget

The applicant has submitted an operating budget in 2013 dollars, for the first and third years of operation:

	Year One	Year Three
Revenues	$2,983,147	$3,594,373
Expenses:		
Operating	$2,756,589	$3,121,276
Capital	226,018	238,881
Total Expenses	$2,982,607	$3,360,157
Net Income	$540	$234,216
Utilization: (Visits)	16,350	19,700
Cost per Visit	$182.42	$170.57

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

Medicaid Managed Care	45.0%
Medicare Fee-for-Service	20.0%
Commercial Fee-for-Service	20.0%
Private Pay	13.0%
Charity Care	2.0%

Expense and utilization assumptions are based on current patients seen at Brooklyn Medcare and referral patterns within the geographical area.

Capability and Feasibility

There are no project costs associated with this application. The asset purchase of $750,000 will be paid by proposed member's equity.

The proposed members have made a $250,000 deposit in escrow for the asset purchase agreement. Working capital requirements, estimated at $560,026, appear reasonable based on two months of third year expenses. The applicant will finance $200,000 via a loan at an interest rate 5.86% for a five year term, for which a letter of interest has been provided. The remainder, $360,026, will be provided as equity by the proposed members. Presented as BFA Attachment A is a summary of net worth statements of the proposed members of PALA Community Care LLC, which indicates the availability of sufficient funds for the stated levels of equity. Presented as BFA Attachment B is the pro-forma balance sheet of PALA Community Care, LLC as of the first day of operation, which indicates positive member's equity position of $1,047,101.

The submitted budget for the D&TC shows a net excess of revenues over expenses of $540 and $234,216 during the first and third years, respectively. The applicant's revenues reflect current reimbursement methodologies and rates of payment for D&TC services. The budget appears reasonable.

As shown on BFA Attachment C, Brooklyn Medcare has experienced negative working capital and maintained a positive equity position and positive net income from operations of $103,070 in 2012. The negative working capital is due from the unaudited balance sheet being reported on a cash basis for income tax purposes, whereas the accrual method would show positive working capital once accounts receivables of $364,000 were added. As shown on BFA Attachment D, Brooklyn Medcare has maintained positive working capital, equity, and net income from operations of $202,079 as of June 30, 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statement for Proposed Members
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Financial Summary of NY United Healthcare LTD d/b/a Brooklyn Medcare, unaudited 2012
BFA Attachment D	Financial Summary of NY United Healthcare LTD d/b/a Brooklyn Medcare, internal as of June 30, 2013

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

September 12, 2013

Dialysis Services- Establish/Construct **Exhibit # 8**

	Number	Applicant/Facility
1.	132065 E	Plattsburgh Associates, LLC (Clinton County)

Public Health and Health Planning Council

Project #132065-E
Plattsburgh Associates, LLC

County: **Clinton County**
Purpose: **Establishment**

Program: **Diagnostic and Treatment Center**
Submitted: **July 24, 2013**

Executive Summary

Description

Plattsburgh Associates, LLC, a limited liability company, requests approval to purchase and become the operator of CVPH–H.K. Freedman Renal Center (HK Freedman Renal Center) a 24-station chronic renal dialysis center with transfusion services, which currently operates as an extension clinic of Champlain Valley Physicians Hospital Medical Center (CVPHMC). After the change in ownership of the facility, the renal dialysis center will continue to be located in leased space at 91 Plaza Boulevard, Plattsburgh, New York (Clinton County).

The proposed members of Plattsburgh Associates, LLC and their ownership percentages are as follows:

Owner	Percentage
American Renal Associates, LLC • American Renal Holdings, Inc. -100% owner	51.0%
Plattsburgh Medical Office Management, Inc. • Craig G. Hurwitz, M.D - 100% owner	36.5%
Laura G. Carbone, M.D.	12.5%

Plattsburgh Associates, LLC members include: Laura Carbone, M.D. a local nephrologist; Plattsburgh Medical Office Management, Inc. whose sole stockholder, Craig Hurwitz, M.D., is a local nephrologist; and American Renal Associates, LLC, (ARA) a Delaware limited liability company. American Renal Associates, LLC is entirely owned by American Renal Holdings, Inc. (ARH) and through this structure ARH owns and operates 132 dialysis clinics in 21 states and the District of Columbia. In each joint venture, American Renal Associates, LLC owns the controlling interest, and the nephrologists' partners own the non-controlling interest.

Under a companion application, CON 132067, Elizabethtown Center, LLC is seeking approval to establish a diagnostic and treatment center (D&TC) certified to operate an 8-station chronic renal dialysis center currently operated by Elizabethtown Community Hospital, located within the hospital. In both applications, Plattsburgh Associates, LLC (CON 132065) and Elizabethtown Center, LLC (CON 132067), the ownership structure is the same.

Champlain Valley Physicians Hospital Medical Center (CVPHMC) and Elizabethtown Community Hospital (ECH) are related through common active parents, Fletcher Allen Partners, Inc and Community Providers, Inc.

DOH Recommendation

Contingent Approval

Need Summary

This facility will offer outpatient dialysis services and training for home dialysis. Because there will be no change in the number of dialysis stations or in the location of this facility, no need review is required for this application.

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

Champlain Valley Physicians Hospital Medical Center is selling its 24-station CVPH–H.K. Freedman Renal Center renal dialysis center to Plattsburgh Associates, LLC for an allocated price of $2,418,126. Under a companion application, CON 132067, Elizabethtown Community Hospital is selling its dialysis unit to Elizabethtown Center, LLC for an allocated price of $181,874. The total purchase of $2,600,000 for both transactions will be met as follows: $540,000 in equity from the proposed members and a $2,060,000 loan with a five year terms at a 5% interest rate from American Renal Associates, LLC, the applicant's 51% owner. There are no project costs associated with this CON.

Budget:	Revenues:	$4,938,961
	Expenses:	$4,328,440
	Gain:	$610,521

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of loan commitment that is acceptable to the Department of Health. [BFA]
3. Submission of working capital loan commitment that is acceptable to the Department of Health. [BFA]
4. Submission of a resolution of the members of Plattsburgh Associates, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the Certificate of Amendment of the Articles of Organization of Plattsburgh Associates, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of the Operating Agreement of Plattsburgh Associates, LLC, acceptable to the Department. [CSL]
7. Submission of a photocopy of a Certificate of Amendment to the Certificate of Incorporation of Plattsburgh Medical Office Management, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of the Bylaws of Plattsburgh Medical Office Management, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy the Application for Authority of American Renal Associates LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy the limited liability company agreement of American Renal Associates LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy the Certificate of Incorporation of American Renal Holdings, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy the Bylaws of American Renal Holdings, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy the Articles of Organization of American Renal Holdings Intermediate Company, LLC, acceptable to the Department. [CSL]
14. Submission of a photocopy of the Operating Agreement of American Renal Holdings Intermediate Company, LLC, acceptable to the Department. [CSL]
15. Submission of a photocopy of the Certificate of Incorporation of American Renal Associates Holdings, Inc., acceptable to the Department. [CSL]
16. Submission of a photocopy of the Bylaws of American Renal Associates Holdings, Inc., acceptable to the Department. [CSL]
17. Submission of a photocopy of the Partnership Agreement of Centerbridge Capital Partners L.P., acceptable to the Department. [CSL]
18. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL, BFA]
19. Submission of a photocopy of the Application for Authority of American Renal Management, LLC, acceptable to the Department. [CSL]
20. Submission of a photocopy of the executed Asset Purchase Agreement, acceptable to the Department. [CSL, BFA]
21. Submission of a photocopy of the executed Lease Agreement, acceptable to the Department. [CSL, BFA]

Approval conditional upon:

1. The project must be completed with in two years 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]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. To provide Transfusion Services, licensure by the New York State Department of Health- Wadsworth Center is required. [HSP]

Council Action Date

October 3, 2013.

Need Analysis

Background

Plattsburgh Associates, LLC is seeking approval to be established as the new operator of Champlain Valley Physicians Hospital Freedman Renal Center, a 24-station chronic renal dialysis facility located at 91 Plaza Boulevard, Plattsburgh, 12901, Clinton County.

As there will be no change in the number of dialysis stations or the location of the facility, there will be no impact on need.

Recommendation

From a need perspective, approval is recommended.

Programmatic Analysis

Background

Establish Plattsburgh Associates, LLC as the operator of a renal dialysis extension clinic currently operated by Champlain Valley Physicians Hospital Medical Center (CVPHMC).

Proposed Operator	Plattsburgh Associates, LLC
Site Address	91 Plaza Boulevard, Plattsburgh
Approved Services	Chronic Renal Dialysis (24 Stations) and Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	Open 6 days per week, 2.5 shifts per day. (Hours will expand as needed.)
Staffing (1st Year / 3rd Year)	23.5 FTEs and will remain at that level by the third year of operation.
Medical Director(s)	Laura G. Carbone, MD Craig G. Hurwitz, MD (Assoc. Medical Director)
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Champlain Valley Physicians Hospital Medical Center 2.1 miles and 5 minutes

Character and Competence

The members of the LLC are:

Name	**Percent**
American Renal Associates, LLC (ARA)	51.0%
American Renal Holdings, Inc. (100%)	
Plattsburgh Medical Office Management, Inc.	36.5%
Craig G. Hurwitz, MD (100%)	
Laura G. Carbone, MD	12.5%

American Renal Holdings, Inc. (ARH) is a national provider of kidney dialysis services that owns and operates 132 dialysis clinics in 21 states and the District of Columbia. The Company's operating model is based on shared ownership of its facilities, with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest. Plattsburgh Medical Office Management is wholly owned by Craig G. Hurwitz, MD. Drs. Hurwitz and Carbone are both local physicians, board-certified in Internal Medicine and Nephrology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment

history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement, which is summarized as follows:

Seller:	Champlain Valley Physicians Hospital Medical Center
Purchaser:	Plattsburgh Associates, LLC
Acquired Assets:	All fixed assets; all of Seller's leasehold interest in the real property; all inventory on hand at the Seller's Business as of the Closing Date; all licenses and permits that are transferred by law, including Seller's Medicare and Medicaid provider numbers used by the Seller's Business; all rights in third party software that are assignable to Buyer and that Buyers choose to assume at Closing; files, records, documents, data, plans, proposals and all other recorded knowledge of Seller used or generated in connection with Seller's Business and Seller's business as a going concern, and all intangible property and goodwill associated with Seller's Business.
Excluded Assets:	All cash, cash equivalents and short term investments of cash; the rights arising under any contracts that are not assigned contracts; any inter-company balances due to or from the Seller; all income tax refunds and tax deposits; all corporate minute books and Tax Returns of Seller; any insurance policies and procedures therefrom; any accounts receivable for services performed prior to the Closing Date; all of Seller's copyrights, trademarks, patents, and trade secrets; all proprietary software of Seller' all deposits and rebates; Medicare and Medicaid bad debt recovery claims and the medical records and patient lists of patients of Seller of the Center.
Assumed Liabilities:	On the Closing Date, Buyer shall assume the following liabilities: obligations arising from events occurring on or after the Closing Date under those agreements, designated as assigned contracts; the operating expenses of Seller relating to Seller's Business prior to the Closing Date and the cost of and responsibility for any improvements or repairs at the Center associated with or arising out of any work which Seller has agreed to perform at the Center at Buyer's direction or request prior to the Closing Date.
Excluded Liabilities:	On the Closing Date, Buyer shall not assume any liability or obligation under any real estate lease or any contracts or agreement to which Seller is a party or by which Seller or Seller's business is bound that has not been listed as assigned contracts; any liability or obligation to former or current officers, directors, employees, shareholders or any affiliate of Seller; any liability of Seller for state or local taxes; any liability or obligation

	arising out of any litigation in connection with Seller; any claims made by or against Seller relating to the issuance, sale, repayment or repurchase of any of its securities arising from or relating to the period prior to the Closing Date; any liability or obligation arising prior to the Closing Date under any clinical trials or research agreement and any liability or obligation to Seller with respect to any labor unions, association or representative body, including but not limited to the 1199 SEIU, United Healthcare Workers East and New York State Nurses Association.
Purchase Price:	$2,600,000 of which is allocated as follows: $2,418,126 for the purchase of purchase of CVPH–H.K. Freedman Renal by Plattsburgh Associates, LLC (CON 132065) $181,874 for the purchase of Elizabethtown Community Hospital (ECH) dialysis unit by Elizabethtown Center, LLC (CON 132067)
Payment:	$ 540,000 in members equity $2,060,000 at closing loan from American Renal Associates, LLC with 5-year terms at interest rate of 5%

The proposed payment for CON 132065:

	Plattsburgh Associates, LLC
Equity-Members	$483,625
Loan (5-year term @ 5%)	$1,934,501
Total	$2,418,126

The loan will be provided by American Renal Associates, LLC, and the applicant's 51% member.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement or understanding between the applicant and 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.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized as follows:

Provider:	American Renal Management, LLC
Facility:	Plattsburgh Associates, LLC
Services Provided:	Ensure the proper maintenance and repair of Dialysis Center facility; apply for and maintain, in the name of the Company, all state, federal and local licenses, permits, certifications and approvals required in connection with the operation of the Dialysis Center, and use all reasonable efforts to monitor the Company's continuing compliance with all applicable State, federal and local laws; provide drafts of all necessary manuals, policies and procedures for Dialysis Center operations; establish and supervise all administrative and accounting functions; develop training programs for all personnel at the Dialysis Center; recommend and analyze the purchases and leases of equipment; prepare, in the name of the Dialysis Center and for the Dialysis Center's signature, all cost reports, exception requests and other cost reports and data necessary for obtaining reimbursement for the items and services provided by the Dialysis Center under the Medicare and Medicaid program; select and administer financial and clinical information systems for the Dialysis Center; procure, on behalf of the Dialysis Center; insurance policies covering the operation of the Dialysis Center; develop a human resource policy manual and oversight to ensure compliance and market the Dialysis Center's services, including strategic planning. The ultimate authority for the operations, care of the patients

	and regulatory compliance shall remain the responsibility of the center and its governing body.
Term:	3 Years with an automatic renewals of 3-year terms
Compensation:	$425,000 per year (1/12 paid monthly). The fee will be reviewed each year, for possible adjustment.

The following powers are reserved for the Company:

- direct independent authority over the appointment or dismissal of Company management level employees and medical staff;
- approval of Company operating and capital budgets and independent control of the books and records;
- adoption of approval of Company operating policies and procedures and independent adoption of policies affecting the delivery of healthcare services;
- authority over the disposition of assets and authority to incur liabilities not normally associated with the day to day operations;
- approval of certified of need applications filed by or on behalf of the Company;
- approval of Company debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- approval of Company contracts for consultants or for clinical services, and
- approval of settlements of administrative proceedings or litigation to which the Company is a party.

There is a common ownership between the administrative services agreement provider and the applicant's 51% owner, American Renal Associates, LLC.

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the proposed site:

Premises:	11,343 square feet located at 91 Plaza Boulevard, Plattsburgh, New York 12901
Landlord:	Champlain Valley Physicians Hospital Medical Center
Lessee:	Plattsburgh Associates, LLC
Rental:	$226,860 ($20 per sq. ft.) with annual increases of 1.5% per year
Term:	Five-year term with three additional five-year extensions
Provisions:	Triple Net

The applicant has provided an affidavit stating that 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.

Operating Budget

The applicant has submitted first year's operating budget, in 2013 dollars, as summarized below:

	Year One
Total Revenues	$4,938,961
Expenses:	
Operating	$3,869,009
Capital	459,431
Total Expenses	$4,328,440
Excess of Revenues over Expenses	$610,521
Utilization: (treatments)	15,585
Cost Per Treatment	$277.73

*Includes pharmaceuticals.

Utilization by payor source for the current year and the first year subsequent to the change in operator is summarized below:

	Current Year	Year One
Medicaid Fee-for-Service	2.06%	1.84%
Medicare Fee-for-Service	85.13%	76.09%
Commercial Fee-for-Service	12.47%	11.15%
Private Pay & All Other	.34%	10.92%

Utilization estimates were based on existing volumes at CVPHMC's dialysis program plus an approximate 3% increase which was based upon the population aging demographics. Expense projections were based on the American Renal Associates, LLC historical experiences in operating dialysis clinics. The number of procedures required to breakeven in the first year is approximately 10,538 treatments, or 67.6% of the budgeted treatments.

Capability and Feasibility

Total purchase price for both CONs is $2,600,000 broken out as follows: under CON 132065 Plattsburgh Associates, LLC is purchasing CVPH–H.K. Freedman Renal Center for $2,418,126 and under CON 132067 Elizabethtown Center, LLC is purchasing Elizabethtown Community Hospital's dialysis unit for $181,874. Plattsburgh Associates, LLC will meet the $2,418,126 purchase price as follows: $483,625 in equity from the proposed members and a loan allocated to the project in the amount of $1,934,501 at the above stated terms. The loan is part of $2,060,000 loan from American Renal Associates, LLC, who is the applicant's 51% owner. There are no project costs associated with this CON.

Working capital will be minimal as the operation has a full complement of patients and is profitable. The members of Plattsburg Associates, LLC are contributing $538,855 in cash to be used for the purchase and working capital. Furthermore, the applicant states that in the event that additional working capital is needed, it will be provided. Presented as BFA Attachments A through C are the member's net worth statements, American Renal Holdings, Inc. and Subsidiaries 2011-2012 certified financial summary, and their June 30, 2013 financial summary, which show adequate resources for meeting their financial obligations. Presented as BFA Attachment D is the pro-forma balance sheet that shows operations will start off with $538,855 in equity.

The first year's financial projections show a net income of $610,521. Revenues reflect current reimbursement methodologies for Medicaid and Medicare and commercial revenues were based on American Renal Associates, LLC experience in operating centers throughout the United States including one in Amsterdam, New York. The budget appears reasonable.

Review of BFA Attachment B shows that for the years 2011 and 2012 American Renal Holdings Inc. and subsidiaries maintained an average positive working capital position and had an average positive net asset position. During this same time period, American Holdings, Inc. achieved an average net income of $15,271,000.

Review of BFA Attachment C shows that for June 30, 2013 American Renal Holdings Inc. and Subsidiaries had a positive working capital position and a negative asset position. In order to take advantage of lower interest rates, American Renal Holdings undertook a refinancing, raising $640 million, the majority of which was used to retire existing debt and some used to pay shareholders. According to the applicant, retiring the old debt early resulted in non-cash charges to interest expense of $21.5 million, which will yield benefits over time.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements
BFA Attachment B	Financial Summary for 2011 and 2012, American Renal Holdings, Inc and Subsidiaries
BFA Attachment C	Financial Summary for June 30, 2013, American Renal Holdings, Inc and Subsidiaries
BFA Attachment D	Pro-forma Balance Sheet for Plattsburgh Associates, LLC

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

September 12, 2013

Residential Health Care Facilities - Establish/Construct **Exhibit # 9**

	Number	Applicant/Facility
1.	131107 E	JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center (Erie County)
2.	131120 E	Essex Operations Associates, LLC d/b/a Essex Center for Rehabilitation and Healthcare (Essex County)
3.	131193 E	Washington Operating Associates LLC d/b/a Washington Center for Rehabilitation and Healthcare (Washington County)
4.	131195-E	River Ridge Operating, LLC d/b/a River Ridge Living Center (Montgomery County)
5.	132079 E	Auburn Senior Services, Inc. (Cayuga County)
6.	132093 B	Auburn Senior Services, Inc. (Cayuga County)

Public Health and Health Planning Council

Project # 131107 E

JSSG Healthcare, LLC
d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center

County: **Erie County**
Purpose: **Establishment**

Program: **Residential Health Care Facility**
Submitted: **February 22, 2013**

Executive Summary

Description

JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center (Fiddlers Green Manor), a limited liability company, proposes to be established as the new operator of Hart Associates of Springville, Inc., d/b/a Fiddlers Green Manor Nursing Home, a proprietary corporation that currently operates an 82-bed residential health care facility (RHCF) located at 168 West Main Street, Springville (Erie County).

Fiddlers Green Manor entered into an Asset Purchase Agreement on September 21, 2012, with Hart Associates of Springville, Inc., d/b/a Fiddlers Green Manor Nursing Home to purchase the nursing home's operating interest. On January 30, 2013, in accordance with an auction and Sale Hearing ordered by the United States Bankruptcy Court-Western District of New York, the Asset Purchase Agreement for the sale of the operating interest was amended from $420,000 to $545,000, reflecting the highest bid by JSSG Healthcare LLC at the Sale Hearing.

Concurrent with entering into the Asset Purchase Agreement, ISJ Realty, LLC entered into a Real Estate Agreement with B.J. Fiddlers Green Realty Corporation to transfer the real property interest of Fiddlers Green Manor Nursing Home to ISJ Realty, LLC. The real property was not part of the bankruptcy proceedings and is not subject to the January 30, 2013 court order. However, it was noted in the court order that the successful bidder of the operating interest must contemporaneously enter into a lease agreement with the owner of the real property.

Ownership of the operations and realty after the requested change is as follows:

Operator

Current		Proposed	
Hart Associates of Springville, Inc., d/b/a Fiddlers Green Manor Nursing Home		JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center	
	Ownership		Membership
Colin C. Hart	100%	Jeffrey Goldstein	75%
		Chaim Lowenbraun	25%

Realty

B. J. Fiddlers Green Realty Corp.		*ISJ Realty, LLC*	
	Ownership		Membership
Michael Birnbaum	25%	Chaim Lowenbraun	50.00%
Ronnie Burns	25%	Ernest Schlesinger	20.00%
David Jones	25%	David Janklowicz	10.00%
Judi Jones	25%	Israel Sherman	6.67%
		Jeffrey Goldstein	6.67%
		Samuel Sherman	6.66%

The proposed members of JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center, have ownership interests in two RHCF facilities located in New York State. They include the following: North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing and Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center. Their financial summaries are presented as BFA Attachments E through F.

DOH Recommendation

Contingent Approval.

Need Summary

Fiddlers Green Manor Nursing Home had a 2.2 percent increase in utilization from 94.26 percent in 2009 to 96.33 percent in 2011. Utilization for Erie County was 91.75% in 2011. There would be no change in beds or services with the approval of this application.

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.

Financial Summary

JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center will acquire the operating assets for $545,000, plus a limited set of assumed liabilities and certain cure amounts. The $545,000 for the operating interest will be funded as follows: $109,000 from members' equity with the remaining $436,000 to be funded from a 7-year term loan at a 5.75% interest rate. ISJ Realty, LLC will purchase the real property for $1,000,000 plus certain cure amounts, which will be funded through the members' equity contributions. There are no project costs associated with this application.

Budget:	Revenues:	$5,599,236
	Expenses:	5,063,504
	Gain:	$535,732

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 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 implementation of the plan. The plan should include but not be limited to:
   - Information on activities relating to a-c above; and
   - Documentation pertaining to the number of referrals and number of Medicaid admissions and
   - Other factors as determined by the applicant to be pertinent.

   The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
3. Submission of a loan commitment that is acceptable to the Department of Health [BFA]
4. Submission of a photocopy of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Lease Agreement, acceptable to the Department.[CSL]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013.

Need Analysis

Background

JSSG Healthcare, LLC, doing business as Fiddlers Green Manor Rehabilitation and Nursing Center, seeks approval to be established as the new operator of Fiddlers Green Manor Nursing Home, an 82 bed residential health care facility located at 168 West Main Street, Springville, 14141, in Erie County.

Analysis

Fiddlers Green Manor Nursing Home's utilization increased from 2009 to 2011 and was higher than that of Erie County as a whole, as shown in Table 1 below:

***Table 1*: Fiddlers Green Manor Nursing Home/Erie County Occupancy Rates**

Facility/County	2009	2010	2011
Fiddlers Green Manor Nursing Home	94.26%	93.69%	96.33%
Erie County	95.34%	93.89%	91.75%

There is currently an excess of 602 beds in Erie County.

Table 2: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	6,225
Beds Under Construction	-332
Total Resources	5,893
Unmet Need	-602

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission polices and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Fiddlers Green Manor Nursing Home was above the 75 percent planning average for 2009 and 2010. The facility reported Medicaid admissions of 14.47 percent and 32.5 percent in 2009 and 2010, respectively. The 75 percent planning averages for Erie County for these years were 10.92 percent (2009) and 23.78 percent (2010).

Conclusion

This project will enable Fiddlers Green Manor Nursing Home to continue operating and serving as an important source of RHCF care for the community, as evidenced by its relatively high occupancy rate and higher-than-average Medicaid admissions rate.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Fiddlers Green Manor Nursing Home	Fiddlers Green Manor Rehabilitation and Nursing Center
Address	168 West Main Stretet Springville, NY. 14141	Same
RHCF Capacity	82	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Proprietary
Class of Operator	Corporation	Limited Liability Company
Operator	Hart Associates of Springville, Inc. Colin Hart 100%	JSSG Healthcare, LLC Jeffrey Goldstein 75.0% (managing member) Chaim Lowenbraun 25.0%

Character and Competence

Facilities Reviewed

Nursing Homes

Niagara Rehabilitation and Nursing Center	06/2012 to present
The Hamptons Center for Rehabilitation and Nursing	11/2007 to present

Individual Background Review

Jeffrey Goldstein is a New York State licensed nursing home administrator and is considered to be in good standing. He is currently employed as the operations manager at the Bay Park Center for Nursing and Rehabilitation, the White Plains Center for Nursing Care, Throgs Neck Extended Care Facility, and the Hampton Center for Rehabilitation and Nursing. Previously Mr. Goldstein was employed as the operations manager at the Nathan Miller Center for Nursing Care and as acting administrator of the White Plains Center for Nursing Care. Mr. Goldstein discloses the following ownership interests in health facilities:

Niagara Rehabilitation and Nursing Center	06/2012 to present
The Hamptons Center for Rehabilitation and Nursing	11/2007 to present

Chaim Lowenbraun was the President and Chief Executive Officer of Integra Partners, LLC, a durable medical equipment provider for six years before selling the business and leaving employment at the company in September 2012. He is currently unemployed. Mr. Lowenbraun discloses no interest in health facilities.

No negative information has been received concerning the character and competence of the applicants.

A review of The Hamptons Center for Rehabilitation and Nursing for the period identified above reveals that the facility was fined $8,000 pursuant to a Stipulation and Order issued April 26, 2009 for surveillance findings on April 21, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents; 10 NYCRR 415.12 - Quality of Care; 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; and 415.26 - Organization and Administration.

The facility was also fined $4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) - Quality of Care: Accidents & Supervision; and 10 NYCRR 415.26 - Administration.

The facility was also fined $10,000 pursuant to Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

A review of the operations and deficiencies noted above for The Hamptons Center for Rehabilitation and Nursing for the period identified above results in a conclusion of a substantially consistent high level of care, since there were no repeat enforcements.

A review of operations for the Niagara Rehabilitation and Nursing Center for the period identified above, results in a conclusion of a substantially consistent high level of care, since there were no enforcements.

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, is recommended.

Financial Analysis

Asset Purchase Agreement- Operating Interest

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:	September 21, 2012 and January 30, 2013
Seller:	Hart Associates of Springville, Inc d/b/a Fiddlers Green Manor Nursing Home (owns and operates the Facility as debtor-in-possession under the Chapter 11 of title 11 of the United States Code).
Purchaser:	JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center
Purchased Assets:	Seller's right, title and interest in the following assets related to the business and operations: leasehold improvements, furniture, equipment and other tangible personal property, inventory, supplies, assignable existing contracts, intellectual property rights, security deposits and prepayments, assignable and assumed insurance policies, menus, policy and procedure manuals, assignable computer software, telephone and fax numbers, email addresses and domain names, copies of financial books and other books and records, residents' patient records, employees payroll records, assignable warranties, goodwill, retirement plans, Medicare and Medicaid provider numbers and assignable third party payor programs, accounts receivable (1st $730,000 then 50/50 split with seller).
Excluded Assets:	Vacant real property owned by seller not used in the operations, retroactive rate increases that become effective on or after closing date but before Bankruptcy Case is closed that are not offset against Overpayment Obligations, refunds prior to the close of the Bankruptcy Case, cash and cash equivalents.
Assumed Liabilities:	OMIG Liabilities and the cure payment from and after the closing. If OMIG Liabilities exceed $1,300,000 then the purchase prices will be decreased by the excess. If the OMIG Liabilities are less then the $1,300,000 then the purchase price will increase by the difference.
Purchase Price	$545,000
Payment of Purchase Price:	$ 75,000 escrow deposit at signing $470,000 at the closing

The purchase agreements are consistent with the Bankruptcy Court orders.

The purchase price is proposed to be satisfied as follows:

Equity	$ 109,000
Loan (5.75% , 7-year term)	436,000
Total	$545,000

A letter of interest has been provided by Healthcare Finance.

Presented as BFA Attachment A are the proposed members' net worth summaries for JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center, which reveal sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Chaim Lowenbraun has provided an affidavit stating his willingness to contribute resources disproportionate to his membership interest in the facility operations.

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.

Hart Associates of Springville, Inc d/b/a Fiddlers Green Manor Nursing Home has a liability to New York State totaling $1,526,289 for the following: $1,434,428 on the Medicaid Financial Management System and $91,861 due to the Health Facility Cash Assessment Program. According to Purchase Agreement, the applicant is going to pay $1,300,000 without adjusting the purchase price (an amount greater than the $1.3 million will reduce the purchase price or an amount less than the $1.3 million will increase the purchase price).

Asset Purchase Agreement- Real Property

The applicant has submitted an executed real property asset purchase agreement to purchase the real property, the terms of which are summarized as follows:

Date:	August 24, 2012
Seller:	B. J. Fiddlers Green Realty Corporation
Purchaser:	ISJ Realty, LLC
Purchased Assets:	Transfer, convey and assign seller's right, title and interest in a certain plot, piece and parcel of undeveloped land known as 168 West Main Street, Springville, NY 14141 (Tax Map # 335.19-2-6) and the buildings, parking areas, fixtures, and other improvements including the Fiddlers Green Manor Nursing Home consisting of an 82-bed skilled nursing facility located at 168 West Main Street, Springville, NY, and the buildings commonly known as the Spencer House, the Cranston House and the Cottages. All easements and other rights of the sellers.
Purchase Price:	$1,000,000
Payment of Purchase Price:	$ 50,000 escrow deposit on signing agreement 950,000 at closing $1,000,000

The purchase price is proposed to be satisfied as follows:

Equity	$1,000,000

Presented as BFA Attachment B are the proposed members' net worth summaries for ISJ Realty, LLC, which reveal sufficient resources to meet the equity requirement. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Therefore, Samuel Sherman has provided an affidavit stating that he is willing to contribute resources disproportionate to his membership interest in the real estate operations.

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted an executed lease agreement; the terms are summarized below:

Date:	February 13, 2013
Premises:	82 Bed RHCF located at 168 West Main Street, Springville, New York 14141
Owner/Landlord:	ISJ Realty, LLC
Lessee:	JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center
Term:	Thirty years
Rent:	$120,000 per year ($10,000 per month) with a 3% increase per year (if and/or when the landlord enterers into a mortgage the tenant will also make payments due in respect to the Mortgage)
Provisions:	Triple net lease

The lease arrangement between the landlord, ISJ Realty, LLC and the operator, JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center, is a non-arm's length agreement.

Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2013 Nursing Home Consolidated Capital (Schedule VI – Property), within three years the historical costs under the return of and return on capital will have been reimbursed.

Operating Budget

The applicant has provided an operating budget, in 2013 dollars, for the first year subsequent to change in ownership. The budget is summarized below:

	Per Diem	Total
Revenues:		
Medicaid	$139.35	$2,994,910
Medicare	456.11	1,231,029
Private Pay	242.85	1,127,291
Assessment Revenue	9.41	246,006
Total Revenues:		$5,599,236
Expenses:		
Operating		$4,921,309
Capital		142,195
Total Expenses:		$5,063,504
Net Income:		$535,732
RHFC Utilization (patient days)		28,833
RHFC Occupancy		96.3%

The following is noted with respect to the submitted RHCF operating budget:

- RHCF expenses include lease renta;
- RHCF Medicaid revenues are based on the 2013 rates.
- RHCF Medicare revenues were based upon actual rates trended to 2013;
- RHCF private pay revenues are based upon actual rates trended to 2013;
- RHCF projected utilization is 96.3%. Utilization from January 2012 through October 31, 2012, averaged 94.94% and for the periods from 2008-2011 utilization averaged 93.95.
- 2013 unaudited results indicate 98.2% occupancy January 1 through June 30th.
- Breakeven utilization is projected at 86.87%.

- RHCF utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	74.54%
Medicare Fee-for-Service	9.36%
Private/Other	16.10%

Capability and Feasibility

JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center will acquire the operating assets for $545,000, plus a limited set of assumed liabilities and certain cure amounts. The $545,000 for the operating interest will be funded through the members' equity contribution of $109,000, with the balance of $436,000 being borrowed from Healthcare Finance, which a letter of interest has been provided at the above stated terms. Concurrently, ISJ Realty, LLC will purchase the real property for $1,000,000, plus certain cure amounts, which will be funded through the members' equity contributions. Review of BFA Attachments A and B, the members net worth statements, show there are sufficient assets to complete both transactions. There are no project costs associated with this application.

The applicant estimates the working capital requirements at $843,918, which was based on two months of the first year expenses. The working capital will be satisfied through the collection of Hart Associates of Springville, Inc. d/b/a Fiddlers Green Manor Nursing Home accounts receivables. In accordance with the purchase agreement the applicant is entitled to the first $730,000 in collected accounts receivables, and 50% of the remaining balance. The accounts receivable as of October 31, 2012, were $1,717,343, and based upon the above formula, the accounts receivables should provide the applicant with $1,223,672 to be used as working capital. However, if the accounts receivable fail to generate the required $843,918 in working capital, then the members will contribute equity to cover any shortfall.

Presented as BFA Attachment C is the pro-forma balance sheet for JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center, which shows the entity will start off with $1,332,672 in equity. It is noted that assets include $545,000 goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Thus, the net asset position would be $787,676.

The submitted budget indicates that net income of $535,732 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	$ 5,599,236
Projected Expense	5,063,504
Projected Net Income	$535,732
Annual 2011 Income	$5,404,538
Annual 2011 Expense	5,110,659
Annual 2011 Net Income (Loss)	$293,879
Incremental Net Income (Loss)	$241,853

The $194,698 or 3.6% increase in projected income comes from the payor rates trending from 2011 to 2013, while maintaining the same number of patient days and payor mix. On a daily basis, the additional revenue represents approximately $6.75 per patient day. The total expenses are expected to decline by $47,155, primarily due to a reduction in administrative service costs.

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 cost-based capital component payment methodology, to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

BFA Attachment D, the financial summary for Hart Associates of Springville, Inc. d/b/a Fiddlers Green Manor Nursing Home, for the years from 2010 through the draft report dated October 31, 2012, shows the RHCF generated an average loss of $17,741, had an average negative working capital position of $2,399,039, and an average negative net asset position of $2,195,340. Between 2010 and 2011 the

average Medicaid rate went from $125.53 per day to $143.57, while utilization increased 792 patient days going from 28,041 patient days or 93.69% in 2010, to 28,833 patient days or 96.33% in 2011, helping the facility generate a surplus of $293,879 in 2011. During the first 10 months of 2012 ccupancy fell back to 94.94%, but according to New York State Department of Health's website, the facilities occupancy was 96.3% as of June 26, 2013, similar to what the RHCF experienced in 2011.

As shown on BFA Attachment E, North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing, for the years from 2010 through December 31, 2012, generated an average operating surplus of $4,313,340, had an average negative net asset position of $10,492,701, and as of December 31, 2012, had a positive working capital position of $2,326,984. The applicant states after years of struggling to open this new facility and generating significant operating losses during the startup period, the facility has achieved financial viability and is generating operating surpluses, which has brought the negative assets position down from $13,452,020 in 2009, to a negative $5,223,019 at the end of 2012. Average occupancy during this period was 94.05%.

As shown on BFA Attachment F, Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center with an effective date of 4/19/2012, through a draft report dated December 31, 2012, generated positive operating surplus of $208,543, had a positive working capital position of $778,220, and had a net asset position of $1,105,351. Occupancy during this period was 95.64%.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members, JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center
BFA Attachment B	Net Worth of Proposed Members, ISJ Realty, LLC
BFA Attachment C	Pro-forma Balance Sheet, JSSG Healthcare LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center
BFA Attachment D	Financial Summary, Hart Associates of Springville, Inc., d/b/a Fiddlers Green Manor Nursing Home
BFA Attachment E	Financial Summary, North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing
BFA Attachment F	Financial Summary, Amerifalls, LLC d/b/a Niagara Rehabilitation and Nursing Center

Public Health and Health Planning Council

Project # 131120 E

Essex Operations Associates, LLC d/b/a Essex Center for Rehabilitation and Healthcare

County: **Essex County**
Purpose: **Establishment**

Program: **Residential Health Care Facility**
Submitted: **March 1, 2013**

Executive Summary

Description

Essex Operations Associates, LLC, d/b/a Essex Center for Rehabilitation and Healthcare, requests approval to be established as the operator of Horace Nye Home, a 100-bed county owned residential healthcare facility located at 81 Park Street, Elizabethtown, New York.

The County of Essex entered into an Operational Asset Purchase Agreement on February 26, 2013, with Essex Operations Associates, LLC for the sale and acquisition, respectively, of the operating interests of Horace Nye Home. Concurrent with entering into the Operational Asset Purchase Agreement, the County of Essex entered into a Facility Acquisition Agreement with Essex Land Associates, LLC for the sale and acquisition, respectively, of the real property interest of Horace Nye Home. The sole member of Essex Land Associates, LLC is Daryl Hagler, with a 100% membership interest.

The proposed members of Essex Operations Associates, LLC, with ownership percentages, are as follows:

Kenneth Rozenberg	60.00%
Jeremy Strauss	30.00%
Jeffrey Sicklick	5.00%
Yisroel Wolff	5.00%

Presented as BFA Attachment E through J are the financial summaries of Dutchess Center for Rehabilitation; Queens Center of Rehabilitation; Brooklyn Center for Rehabilitation; Williamsbridge Manor; Bronx Center for Rehabilitation & Health, and University Nursing Home. Also, the proposed members have recently acquired ownership interests in other residential healthcare facilities but financial data is not available.

DOH Recommendation

Contingent Approval.

Need Summary

The change in ownership will not result in any change in beds or services. The facility has operated over the 97% planning optimum for 2009, 2010, and 2011 with utilization of 98.1%, 98.2%, and 97.8%, respectively. There is currently a need for 58 residential health care facility (RHCF) beds in Essex County.

Program Summary

No negative information has been received concerning the character and competence of the proposed 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 the CMS 2013 sprinkler mandate.

Financial Summary

The purchase price for the acquisition of the operating interests of Horace Nye Home is $2,025,000. The operating purchase price will be paid as follows: Equity of $405,000 (proposed members) and a bank loan of $1,620,000 at an interest rate of 5.26% for twenty years. The purchase price for the real property interest is $2,025,000. The real property purchase price will be

paid as follows: Equity of $405,000 (landlord) and a bank loan of $1,620,000 at an interest rate of 5.26% for twenty years.

Budget:

Revenues	$9,098,473
Expenses	8,694,576
Net Income	$ 403,897

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.

Recommendations

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 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 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 for the operating portion, acceptable to the Department. [BFA]
4. Submission of a loan commitment for the real estate portion, is acceptable to the Department. [BFA]
5. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
6. Submission of a certificate of amendment to the articles of organization, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013.

Need Analysis

Background

Essex Operations Associates LLC, d/b/a Essex Center for Rehabilitation and Healthcare, seeks approval to enter into an asset purchase agreement with Essex County to become the new operator of Horace Nye Home, a 100-bed residential health care facility located at 81 Park Street, Elizabethtown, 12932, in Essex County.

Table 1: RHCF Need – Essex County	
2016 Projected Need	368
Current Beds	340
Beds Under Construction	-30
Total Resources	310
Unmet Need	58

Table 2: Horace Nye Home /Essex County Occupancy			
Facility/County	*2009*	*2010*	*2011*
Horace Nye Home	98.1%	98.2%	97.8%
Essex County	82.7%	86.4%	87.3%

Horace Nye Home exceeded the Department's 97% planning optimum and the average occupancy for Essex County for 2009, 2010, and 2011.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission polices and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Horace Nye Home exceeded the Medicaid Access standard for 2010 and 2011 as shown below.

Horace Nye Home Medicaid admission percentage
- 2010 – 45.2%
- 2011 – 63.8%

Essex County 75% Medicaid admission percentage
- 2010 – 24.7%
- 2011 – 24.2%

Conclusion

This project will allow the continuation of a facility that has been a community long term care resource. There will be no change in beds or services.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	*Proposed*
Facility Name	Horace Nye Home	Essex Center for Rehabilitation and Healthcare Center
Address	PO Box 127 81 Park Street Elizabethtown, NY 12932	Same
RHCF Capacity	100	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	Essex County Board of Supervisors Court House Elizabethtown, NY 12932	Essex Operations Associates LLC d/b/a Essex Center for Rehabilitation and Healthcare Shareholders: Kenneth Rozenberg 60.0% Jeremy Strauss 30.0% Jeffrey Sicklick 5.0% Yisroel Wolff 5.0%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	05/2003 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	06/2008 to present
Chittenango Center for Rehabilitation and Health Care	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	07/2008 to present
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
University Nursing Home	05/2003 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	05/2003 to present

Certified Home Health Agency

Alpine Home Health Care	07/2008 to present

Licensed Home Care Services Agency

Amazing Home Care	05/2006 to present

Emergency Medical Services

Senior Care Emergency Ambulance Services, Inc.	06/2005 to present

Individual Background Review

Kenneth Rozenberg is a licensed nursing home administrator in good standing, and a licensed paramedic in good standing. He lists current employment as CEO at Bronx Center for Rehabilitation & Health Care since 1998. Mr. Rozenberg discloses extensive health care facility interests as follows:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2010 to present
Wartburg Lutheran Home Receivership	06/2008 to 05/2010
Wartburg Lutheran Home for the Aging Receivership	06/2008 to 05/2010
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge–Chittenango Receivership	07/2008 to 05/2011
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
Holliswood Center Receivership	11/2010 to 05/2013
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge- Rome Receivership	07/2008 to 05/2011
University Nursing Home	08/2000 to present
Waterfront Center for Rehabilitation and Health Center	01/2013 to present
Waterfront Center Receivership	08/2011 to 01/2013
Williamsbridge Manor Nursing Home	11/1996 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	05/2005 to present

Jeremy B. Strauss has been employed as Executive Director of Dutchess Center for Rehabilitation since 2003. Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	04/2011 to present
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
Waterfront Center for Rehabilitation	01/2013 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present

Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Waterfront Center for Rehabilitation	01/2013 to present

Yisroel Wolff is a special projects manager at Centers for Specialty Care Business Office since 2010. Prior employment was with HBS Professional Services, a recruitment company, from 2004 to 2010. Mr. Wolff reports no health facility interests.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of **Bronx Center for Rehabilitation and Health Care** for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined $4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations **of Chittenango Center for Rehabilitation and Health Care** (formerly Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined $20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) Quality of Care: Catheters
- The facility was fined $4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision, and 415.26(b)(3)(4) Governing Body.

A review of the operations **of Waterfront Health Care Center** for the period identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision

A review of **Williamsbridge Manor Nursing Home** for the period identified above reveals the following:

- The facility was fined $1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation and Health Care, Waterfront Health Care Center, and Chittenango Center for Rehabilitation and Health Care for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of University Nursing Home, Dutchess Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Boro Park Center for Rehabilitation and Healthcare, Rome Center for Rehabilitation and Health Care, Holliswood Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Richmond Center for Rehabilitation and Specialty Healthcare, Suffolk Center for Rehabilitation and Nursing, and Corning

Center for Rehabilitation for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, the terms of which are summarized below:

Date:	February 26, 2013
Seller:	County of Essex
Purchaser:	Essex Operations Associates, LLC
Assets Acquired:	All of the Seller's rights to continue to participate in the Program; all of Seller's rights, title and interests in and to the Contracts; true and correct copies of the financials and other books, records, information and title documents necessary for the Buyer to operate the Facility on an after the Closing Date; books, records, medical charts and information pertaining to the Residents; any payments made by Payors for goods or services rendered on and after the Closing; books, records, and information pertaining to the Facility's Providers; furniture, office equipment and all inventories and supplies and all engineering plans relating to the Facility and the Premises; copies of all financial, accounting and operating data and records; all computers, software, programs and similar systems owned or leased by or licensed to the Facility used in the operation of the Facility; Seller's right to intellectual property, including the name; Seller's Medicare and Medicaid provider numbers and provided agreements; all security deposit and prepayments; all resident funds held in trust for the Residents; all telephone numbers and fax numbers associated with the Facility, and all other assets used in the Operation of the Facility other than the Excluded Assets.
Excluded Assets	All cash on hand and cash equivalents, including investments in marketable securities, certificate of deposit, bank accounts, investments and pre paid expenses; the Seller's rights, title and interests in the insurance policies covering the Seller; the Seller's rights, title and interest in claims or actions against third parties arising with respect to acts and omissions occurring prior to the Closing Date; the Seller's rights, title and interest in and to any rebates, refunds, settlements from class actions related to the operation of the Facility for periods prior to the Closing Date; all accounts and loans receivable, regardless of when billed, related to services rendered by the Facility prior to the Closing Date; all retroactive rate increases and/or lump sum payments resulting from rate appeals for services rendered at the Facility prior to the Closing Date; all payments or cash equivalents credits relating to the Facility

	resulting from claims, insurance premium rate reductions paid or accruing for periods prior to the Closing Date; all insurance policies not transferable to Buyer; the intellectual property not used at the Nursing Home; the electronic funds transfer accounts of the Nursing Home; the electronic funds transfer accounts of the Nursing Home into which payments are made on accounts receivable and all IGT funds due the Buyer for all periods preceding the sale date.
Assumed Liabilities:	The Buyer shall only assume at the Closing, the obligations exclusively arising on or after the Closing Date with respect to the use of Assets on ad after the Closing Date.
Excluded Liabilities:	All accounts and loans payable; any and all liabilities or obligations related to any or all of the Assets, the ownership or operation of the Facility and/or real property, arising from or related to any period prior to the Closing Date, other than the Assumed Liabilities; any and all amounts due or become due to Programs and/or payors as a result of audit, rate change or otherwise related to goods or services rendered at the Facility prior to the Closing Date; all cash receipt assessments related to all revenues received by the Facility before and after the Closing Date related to services rendered prior to the Closing Date; any liability arising from or relating to claims of medical malpractice and/or other professional liability of Seller and any and all obligations of the Seller pursuant to this Agreement, the Transaction Documents, the Land Sale Contract and the documents executed in connection therewith.
Purchase Price:	$2,025,000
Payment of Purchase: Price:	A deposit of $125,000 to be held in escrow. The balance of the purchase price shall be paid at Closing.

The applicant has submitted an affidavit from the applicant, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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.

Realty Purchase Agreement

The applicant has submitted an executed realty purchase agreement:

Date:	February 26,2013
Seller:	County of Essex
Purchaser:	Essex Land Associates, LLC
Assets Acquired:	The land located where Horace Nye Home is located.
Purchase Price:	$2,025,000
Payment of Purchase Price:	A deposit of $202,500 to be held in escrow. The balance of the purchase price shall be paid at Closing.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy:

Premises:	The nursing home located at 81 Park Street, Elizabethtown, New York.
Landlord:	Essex Land Associates, LLC
Tenant:	Essex Operations Associates, LLC
Term:	30 years
Rental:	The net annual basic rent is $250,000.
Provisions:	The tenant shall be responsible for maintenance, utilities and real estate taxes.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator:

	Per Diem	Total
Revenues:		
Medicaid Managed Care	$196.60	$5,745,250
Medicare Fee-for-Service	534.12	513,827
Private Pay	515.22	2,839,396
Total Revenues		$9,098,473
Expenses:		
Operating	$235.50	$8,406,466
Capital	8.07	288,110
Total Expenses	$243.57	$8,694,576
Net Income		$403,897
Utilization: (patient days)		35,696
Occupancy		97.79%

Utilization itemized by payor source during the first year subsequent to the change in operator is:

Medicaid Managed Care	81.86%
Medicare Fee-for-Service	2.69%
Private Pay	15.45%

Utilization assumptions are based on the historical experience of the nursing home.

The applicant projected expense reductions. Fringe benefit expenses are being reduced by $3,668,780 from the current year. Fringe benefit expenses are at 24.6%, which is higher than the comparable sized facilities in Essex County. The reason for the expense reductions in fringe benefits is due to the fact the new operator will not be constrained by the existing public employee contract and will be providing a new employee benefit plan for the staff.

Capability and Feasibility

The purchase price for the acquisition of the operating interests is $2,025,000 and will be financed as follows: Equity (proposed members) of $405,000 and a Bank Loan of $1,620,000 at an interest rate of 5.26% for a twenty year term. The purchase price for the acquisition of the real estate interests is $2,025,000 and will be financed as follows: Equity (landlord) of $405,000 and a Bank Loan of $1,620,000 at an interest rate of 5.26% for a twenty year term.

BFA Attachment C is the summary net worth statement of the landlord, Daryl Hagler, which indicates that the landlord has sufficient funds for the equity contribution for the real estate purchase.

Working capital requirements are estimated at $1,449,096, which is equivalent to two months of first year expenses. The applicant will finance $724,548 at an interest rate of 5.26% for a five year term. The remaining $724,748 will be provided as equity by the proposed members. BFA Attachment A is the personal net worth statement of the proposed members of Essex Operations Associates, LLC, which indicates the availability of sufficient funds to meet the equity contribution for the purchase price and the working capital requirement. The applicant submitted an affidavit indicating that they will contribute resources disproportionate to ownership percentages. BFA Attachment D is the pro-forma balance sheet of Essex Operations Associates, LLC as of the first day of operation, which indicates a positive net asset position of $1,129,548 as of the first day of operation.

The submitted budget indicates a net income of $403,897 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 a 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.

BFA Attachment B is the financial summary of Horace Nye Home from 2010 through 2012. As shown, the facility had an average negative working capital position and an average negative net asset position from 2010 through 2012. The reason for the negative working capital position and the negative net asset position is the facility experienced prior year losses. Also, the facility incurred an average net loss of $3,173,888 from 2010 through 2012. The applicant indicates that the reason for the losses are the result of the following: the facility's operating expenses are a combination of direct and indirect expenses incurred by the County in the operation of the facility, of which many of the operation expenses such as the facility's administration does not have direct control over. Consequently, the County offsets the facility operating losses with annual tax revenue that allows the County to maintain a balance budget for the nursing home and the County as a whole. Due to restrictions and property tax increases, the County, similar to other counties in New York State, has determined that continued reliance on tax revenue to offset County nursing home operations is no longer feasible and has decided to sell the facility.

The facility experienced gains in revenue in 2011 due to the following: retroactive Medicaid rate adjustments of $2,567,810 and the intergovernmental transfer (IGT). Neither of those revenues are included in the 2012 revenue posted by the County, and neither of those revenue sources were used in the development of the Year 1 budget projections.

BFA Attachment E is the financial summary of Dutchess Center for Rehabilitation from 2010 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $772,252 from 2010 through September 30, 2012.

BFA Attachment F is the financial summary of Queens Center of Rehabilitation from 2009 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $674,623 from 2010 through September 30, 2012.

BFA Attachment G is the financial summary of Brooklyn Center for Rehabilitation from 2010 through September 30, 2012. As shown, the facility had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of $2,901,419 from 2010 through September 30, 2012.

BFA Attachment H is the financial summary of Williamsbridge Manor from 2010 through September 30, 2012. As shown, the facility had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of $205,393 from 2010 through September 30, 2012.

BFA Attachment I is the financial summary of Bronx Center for Rehabilitation from 2010 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $1,289,798 from 2010 through September 30, 2012.

BFA Attachment J is the financial summary of University Nursing Home from 2010 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $263,392 from 2010 through September 30, 2012.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement-Proposed Members- Operation
BFA Attachment B	Financial Summary- Horace Nye Home
BFA Attachment C	Personal Net Worth Statement- Landlord
BFA Attachment D	Pro-forma Balance Sheet
BFA Attachment E	Financial Summary- Dutchess Center for Rehabilitation
BFA Attachment F	Financial Summary- Queens Center of Rehabilitation
BFA Attachment G	Financial Summary- Brooklyn Center for Rehabilitation
BFA Attachment H	Financial Summary- Williamsbridge Manor
BFA Attachment I	Financial Summary- Bronx Center for Rehabilitation
BFA Attachment J	Financial Summary- University Nursing Home

Public Health and Health Planning Council

Project # 131193 E

Washington Operating Associates, LLC, d/b/a Washington Center for Rehabilitation and Healthcare

County: **Washington County**
Purpose: **Establishment**

Program: **Residential Health Care Facility**
Submitted: **April 5, 2013**

Executive Summary

Description

Washington Operations Associates, LLC, d/b/a Washington Center for Rehabilitation and Healthcare, requests approval to be established as the operator of Pleasant Valley, a 122-bed county owned residential healthcare facility located at 4573 Route 40, Argyle, New York. The facility will also consist of an adult day health care program with a capacity of 24.

The County of Washington entered into an Operational Purchase Agreement on February 26, 2013, with Washington Operations Associates, LLC for the sale and acquisition of the operating interests of Pleasant Valley. Concurrent with entering into the Asset Purchase Agreement, the County of Washington entered into a Land Sale Contract with Washington Land Associates, LLC for the sale and acquisition of the real property interest of Pleasant Valley. The members of Washington Land Associates, LLC are Daryl Hagler, with a 99% membership interest and Jonathan Hagler, with a 1% membership interest.

The proposed members of Washington Operations Associates, LLC are as follows:

Kenneth Rozenberg	60%
Jeremy Strauss	30%
Jeffrey Sicklick	10%

BFA Attachments E through J are the financial summaries of Dutchess Center for Rehabilitation; Queens Center of Rehabilitation; Brooklyn Center of Rehabilitation; Williamsbridge Manor; Bronx Center for Rehabilitation & Health and University Nursing Home. Also, the proposed members have recently acquired ownership interests in other residential healthcare facilities, but financial data is not available.

DOH Recommendation

Contingent Approval

Need Summary

The change in ownership will not result in any change in beds or services. There is currently a need for 24 beds in Washington County.

Program Summary

No changes in the program or physical environment are proposed in this application. The facility is in process of completing the CMS 2013 sprinkler mandates. All inside work has been completed. Outside work (pump house parts) anticipates an October 2013 completion, due to a parts delay by the manufacturer.

No negative information has been received concerning the character and competence of the proposed applicant.

Financial Summary

The purchase price for the acquisition of the operating interests of Pleasant Valley is $1,220,000. The operating purchase price will be paid as follows: Equity of $244,000 (proposed members) and a bank loan of $976,000 at an interest rate of 5.60% for a seven year term. The purchase price for the real property is $1,220,000. The real property purchase price will be paid as follows: Equity of $244,000 (landlord) and a bank loan of $976,000 at an interest rate of 5.60% for a seven year term.

Recommendations

Health Systems Agency

There is no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a loan commitment for the operating portion, acceptable to the Department of Health. [BFA]
2. Submission of a loan commitment for the real estate portion, acceptable to the Department of Health. [BFA]
3. Submission of a working capital loan commitment, acceptable to the Department of Health. [BFA[
4. 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]
5. 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]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013.

Need Analysis

Analysis

Pleasant Valley did not exceed the Department's 97 percent planning optimum for 2009, 2010, or 2011. The average occupancy of Washington County has remained consistent while utilization at Pleasant Valley decreased from 96.3% in 2009 to 88.1% in 2011. This considerable decrease was caused by Washington County's announcement that the facility would be sold, which caused concern among community residents that it would eventually be closed.

Table 2: Pleasant Valley Nursing Home /Washington County Occupancy

Facility/County/Region	2009	2010	2011
Pleasant Valley	96.3%	91.9%	88.1%
Washington County	94.4%	95.5%	94.5%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission polices and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

Pleasant Valley Nursing Home Medicaid admission percentage exceeded that of Washington County.

2009 –26.3%
2010 –72.7%

Washington County 75% Medicaid admission percentage:

2009 –10.6%
2010 –20.6%

Conclusion

Approval of this application will help maintain a community resource that provides beds for many Medicaid and low-income patients.

Recommendation

From a need perspective, contingent approval is recommended.

Character and Competence – Background

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	05/2003 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	06/2008 to present
Chittenango Center for Rehabilitation and Health Care	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	07/2008 to present
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
University Nursing Home	05/2003 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	05/2003 to present

Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present

Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present

Emergency Medical Services

Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present

Individual Background Review

Kenneth Rozenberg is a licensed nursing home administrator in good standing, and a licensed paramedic in good standing. He lists current employment as CEO at Bronx Center for Rehabilitation & Health Care since 1998. Mr. Rozenberg discloses extensive health care facility interests as follows:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2010 to present
Wartburg Lutheran Home Receivership	06/2008 to 05/2010
Wartburg Lutheran Home for the Aging Receivership	06/2008 to 05/2010
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge–Chittenango Receivership	07/2008 to 05/2011
Corning Center for Rehabilitation (formerly Founders Pavilion)	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
Holliswood Center Receivership	11/2010 to 05/2013
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Stonehedge- Rome Receivership	07/2008 to 05/2011
University Nursing Home	08/2000 to present
Waterfront Center for Rehabilitation and Health Center	01/2013 to present

Waterfront Center Receivership	08/2011 to 01/2013
Williamsbridge Manor Nursing Home	11/1996 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	05/2005 to present

Jeremy B. Strauss has been employed as Executive Director of Dutchess Center for Rehabilitation since 2003. Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	04/2011 to present
Suffolk Center for Rehabilitation and Nursing	05/2007 to 07/2011
Waterfront Center for Rehabilitation	01/2013 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Waterfront Center for Rehabilitation	01/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicant members.

A review of operations of **Bronx Center for Rehabilitation and Health Care** for the period identified above reveals:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined $4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations **of Chittenango Center for Rehabilitation and Health Care** (formerly Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals:

- The facility was fined $20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) Quality of Care: Catheters
- The facility was fined $4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision, and 415.26(b)(3)(4) Governing Body.

A review of the operations **of Waterfront Health Care Center** for the period identified above reveals:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision

A review of **Williamsbridge Manor Nursing Home** for the period identified above reveals:

- The facility was fined $1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Williamsbridge Manor Nursing Home, Bronx Center for Rehabilitation and Health Care, Waterfront Health Care Center, and Chittenango Center for Rehabilitation and Health Care for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of University Nursing Home, Dutchess Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Boro Park Center for Rehabilitation and Healthcare, Rome Center for Rehabilitation and Health Care, Holliswood Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Richmond Center for Rehabilitation and Specialty Healthcare, Suffolk Center for Rehabilitation and Nursing, and Corning Center for Rehabilitation for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The facility is not in compliance with CMS 2013 sprinkler mandates but the projected completion date for sprinkler installation is October 2013.

Recommendation

From a programmatic perspective, approval is recommended.

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, the terms of which are:

Date:	February 26, 2013
Seller:	County of Washington
Purchaser:	Washington Operations Associates, LLC
Assets Acquired:	All of the Seller's rights to continue to participate in the Program; all of Seller's rights, title and interests in and to the Contracts; true and correct copies of the financials and other books, information and title documents necessary for the Buyer to operate the facility on an after the Closing Date; books, records, medical charts and information pertaining to the Residents; any payments made by Payors for goods or services rendered on and after the Closing; all computers, software, programs and similar systems owned or leased by or licensed solely for use at the Facility; Seller's right to intellectual property, including the name Pleasant Valley Nursing Home; Seller's Medicare and Medicaid provider numbers and provider agreements; supplies; all telephone numbers and fax number associated with the Premises and all other assets of Seller used solely in the operation of the Facility other than the Excluded Assets.
Excluded Assets:	All cash on hand and cash equivalents, including investments in marketable securities, certificate of deposit, bank accounts; the Seller's rights, title and interests in the Contracts to the extent that they give rise to Pre-Closing Receivable; the Seller's rights, title and interests in the insurance policies covering the Seller; the Seller's rights, title and interest in claims or actions against third parties arising with respect to acts and omissions occurring prior to the Closing Date; the Seller's rights, title and interest in and to any rebates, refunds, settlements from class actions related to the operation of the facility for periods prior to the Closing Date; all accounts and loans receivable, regardless of when billed, related to services rendered by the Facility prior to the Closing Date; all retroactive rate increases and/or lump sum payments resulting from rate appeals for services rendered at the Facility prior to the Closing Date; all payments or cash equivalent credits relating to the facility resulting from claims, insurance premium rate reductions paid or accruing for periods prior to the Closing Date; all insurance policies not transferred to Buyer; all motor vehicles of every kind; all of the funds held in Seller's Medicaid funded depreciation accounts; all deposits provided to utility companies or those provided by Seller; all inter-governmental or inter-department receivables by and among a Seller and the name "Washington County".
Assumed Liabilities:	The Buyer shall only assume at the Closing, the obligations exclusively arising on or after the Closing Date with respect to the use of Assets on and after the Closing Date.
Excluded Liabilities:	All accounts and loans payable; any and all liabilities or obligations related to any or all of the Assets, the ownership or operation of the Facility and/or real property, arising from or related to any period prior to the Closing Date, other than the Assumed Liabilities; any and all amounts due or become due to Programs and/or payors as a result of audit, rate change or otherwise related to goods or services rendered at the Facility prior to the Closing Date; all cash receipt assessments related to all revenues received by the Facility before and after the Closing Date related to services rendered prior to the Closing Date; any

	liability arising from or relating to claims of medical malpractice and/or other professional liability of Seller and any and all obligations of the Seller pursuant to this Agreement, the Transaction Documents, the Land Sale Contract and the documents executed in connection therewith.
Purchase Price:	$1,220,000
Payment of Purchase Price:	A deposit of $122,000 held in escrow. The balance of the purchase price shall be paid at Closing.

The applicant has submitted an affidavit from the applicant, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement 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.

Realty Purchase Agreement

The applicant has submitted an executed realty purchase agreement:

Date:	February 26, 2013
Seller:	County of Washington
Purchaser:	Washington Land Associates, LLC
Assets Acquired:	The land located where Pleasant Valley is located.
Purchase Price:	$1,220,000
Payment of Purchase Price:	A deposit of $122,000 to be held in escrow. The balance of the purchase price shall be paid at Closing.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site:

Date:	March 15, 2013
Premises:	The nursing home located at 4573 Route 40, Argyle, New York
Landlord:	Washington Land Associates, LLC
Tenant:	Washington Operations Associates, LLC
Term:	20 years
Rental:	Lessee shall pay to Lessor during the term of this lease a net annual basic rent in an amount equal to the sum of the aggregate debt service payments required to be made by Lessor plus $50,456. The rental payments will be $219,314.
Provisions:	The tenant shall be responsible for maintenance, utilities and real estate taxes.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first year subsequent to the change in operator:

SNF	Per Diem	Total
Revenues:		
Medicaid Managed Care	$165.40	$5,310,753
Medicare Fee-for-Service	468.99	2,209,440
Private Pay	305.23	1,462,991
Total SNF Revenues		$8,983,184
Expenses:		
Operating	$199.78	$8,313,317
Capital	7.81	324,885
Total Expenses	$207.59	$8,638,252

Net Income	$344,932
Utilization: (patient days)	41,611
Occupancy	93.44%

Utilization itemized by payor source for the SNF beds during the first year subsequent to the change in operator is as follows:

Medicaid Managed Care	77.15%
Medicare Fee-for-Service	11.32%
Private Pay	11.53%

The projected budget for the facility is based on the census during the pre-sale announcement period from 2008 through 2010, when the facility was averaging annual census of 40,927 days, 42,896 and 43,272 days, for an average annual census of 42,365 days.

The increase in Medicare days from 2011 to Year 1 budget is based on the fact that the new operator will be implementing an improved admissions process. Those admissions are less likely to be admitted to a facility that is up for sale and also requires the quick responsiveness to the admissions office. The average Medicare utilization is 12.42% in Washington County. As a result, the applicant's projected Medicare utilization is below the county average.

ADHCP

Revenues	$283,017
Expenses	367,703
Net Income	($84,686)
Visits	3,482

Utilization for the ADHCP during the first year subsequent to the change in operator will be 100% Medicaid.

The total revenues and expenses of the entire facility during the first year subsequent to the change in operator are as follows:

Revenues	$9,266,201
Expenses	9,005,955
Net Income	$220,246

Capability and Feasibility

The purchase price for the acquisition of the operating interests is $1,220,000 and will be financed as follows: Equity (proposed members) of $244,000 and a bank loan of $976,000 at an interest rate of 5.60% for a seven year term. The purchase price for the acquisition of the real estate interests is $1,220,000 and will be financed as follows: Equity (landlord) at $244,000 and a bank loan of $976,000 at an interest rate of 5.60% for a seven year term.

BFA Attachment C is the summary net worth statement of the majority member of the landlord, Daryl Hagler, which indicates that the landlord has sufficient funds for the equity contribution for the real estate purchase price.

Working capital requirements are estimated at $1,500,982, equivalent to two months of first year expenses. The applicant will finance $750,496 at an interest rate of 5.6% for a five year term. The remainder, $750,496, will be provided as equity by the proposed members.

BFA Attachment A are the personal net worth statements of the proposed members of Washington Operations Associates, LLC, which indicates the availability of sufficient funds to meet the equity

contribution for the purchase price and the working capital requirement. The applicant submitted an affidavit indicating that they will contribute resources disproportionate to ownership percentages.

BFA Attachment D is the pro-forma balance sheet of Washington Operations Associates, LLC as of the first day of operation, which indicates a positive net asset position of $994,486 as of the first day of operation.

The submitted budget indicates a net income of $260,246 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.

The applicant projected revenue and expense assumptions in the following areas:

- Revenues were reduced by $1,311,050 representing the revenue associated with the 3-bed adult home.
- Expenses were reduced by $461,680 for the direct costs of the adult home.
- The fringe benefit expense decreases from 67.8% to 22.20%, which has a decrease of $2,472,843 during the first year.
- Expenses decreased from $1,345,439 to $666,036, with the decrease of nursing services from $808,670 to $205,200. The County was avoiding hiring additional staff due to the pending sale and was utilizing agency staff to supplement its salaries staff.
- Administrative and general expenses decreased from $911,353 to $437,640 due to reductions to county allocated administrative costs as the facility will no longer be affiliated with Washington County and their County overhead will no longer be applied to the facility.
- Total operating expenses decreased from $13,746,761 to $9,005,906 primarily as a result of reductions to fringe benefits and salaries associated with the operation of the 35-bed adult home.

BFA Attachment B is the financial summary of Pleasant Valley from 2009 through 2012. As shown, the facility had an average negative working capital position and an average negative net asset position from 2009 through 2012. The reason for the negative working capital position and the negative net asset position is that the facility experienced prior year losses. Also, the facility incurred an average net loss of $3,052,396 from 2009 through 2012. The applicant indicated that the reason for the losses is the fact that the facility's operating expenses are a combination of direct and indirect expenses incurred by the County in the operation of the facility, many of which the facility does not directly control. Consequently, the County offsets the facility operating losses with annual tax revenue that allows the County to maintain a balanced budget for the nursing home and the County as a whole. Due to restrictions and property tax increases, the County, similar to other counties in New York State, has determined that continued reliance on tax revenue to offset County nursing home operation is no longer feasible and has decided to sell the facility.

BFA Attachment E is the financial summary of Dutchess Center for Rehabilitation from 2010 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $772,252 from 2010 through September 30, 2012.

BFA Attachment F is the financial summary of Queens Center of Rehabilitation from 2009 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $674,623 from 2010 through September 30, 2012.

BFA Attachment G is the financial summary of Brooklyn Center for Rehabilitation from 2010 through September 30, 2012. As shown, the facility had an average positive working capital position and an

average positive net asset position. Also, the facility achieved an average net income of $2,901,419 from 2010 through September 30, 2012.

BFA Attachment H is the financial summary of Williamsbridge Manor from 2010 through September 30, 2012. As shown, the facility had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of $205,393 from 2010 through September 30, 2012.

BFA Attachment I is the financial summary of Bronx Center for Rehabilitation from 2010 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $1,289,798 from 2010 through September 30, 2012.

BFA Attachment J is the financial summary of University Nursing Home from 2010 through September 30, 2012. As shown, the facility had an average negative working capital position and an average positive net asset position. Also, the facility achieved an average net income of $263,392 from 2010 through September 30, 2012.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of the proposed members of Washington Operations Associates, LLC
BFA Attachment B	Financial Summary- 2009 through 2012 of Pleasant Valley
BFA Attachment C	Net Worth Statement of Daryl Hagler
BFA Attachment D	Pro-forma Balance Sheet first day of operation
BFA Attachment E	Financial Summary- Dutchess Center for Rehabilitation
BFA Attachment F	Financial Summary- Queens Center of Rehabilitation
BFA Attachment G	Financial Summary- Brooklyn Center for Rehabilitation
BFA Attachment H	Financial Summary- Williamsbridge Manor
BFA Attachment I	Financial Summary- Bronx Center for Rehabilitation
BFA Attachment J	Financial Summary- University Nursing Home

Public Health and Health Planning Council

Project # 131195 E
River Ridge Operating, LLC d/b/a River Ridge Living Center

County: **Montgomery County**
Purpose: **Establishment**

Program: **Residential Health Care Facility**
Submitted: **April 5, 2013**

Executive Summary

Description
River Ridge Operating, LLC d/b/a River Ridge Living Center is a limited liability company requesting approval to be established as the new operator of River Ridge Living Center, LLC, an existing 120-bed proprietary residential health care facility (RHCF) located at 100 Sandy Drive, Amsterdam, New York (Montgomery County).

Ownership of the operations before and after the requested change is as follows:

Current Operator: River Ridge Living Center, LLC	
Paul Guttenberg	25%
Susanne Guttenberg	75%

Proposed Operator: River Ridge Operating, LLC d/b/a River Ridge Living Center	
Ruth Hirsch	25%
Benjamin Einhorn	25%
Michael Braunstein	25%
Edward Braunstein	25%

Current Realty Owner: River Ridge Living Center, LLC	
Paul Guttenberg	25%
Susanne Guttenberg	75%

Proposed Realty Owner: River Ridge Realty, LLC	
Ruth Hirsch	25%
Benjamin Einhorn	25%
Michael Braunstein	25%
Edward Braunstein	25%

Realty Ridge Living Center, LLC owns 100% of the land and building along with 60% of the moveable equipment. Providers Network, LLC owns the other 40% of the moveable equipment. The members of Providers Network, LLC are Susanne Guttenberg at 25%, Paul Guttenberg at 50%, and Paul Guttenberg Dynasty Trust at 25%.

DOH Recommendation
Contingent Approval.

Need Summary
The change in ownership will not result in any change in beds or services. Utilization at River Ridge Living Center has increased from 89.7% in 2009 to 96.1% in 2010 to 96.3% in 2011.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants. 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
River Ridge Operating, LLC d/b/a River Ridge Living Center will acquire the RHCF operating assets for $1,800,000, which will be funded as follows: $360,000 from members' equity and a ten year $1,440,000 mortgage with a 20 year amortization schedule at a 5.75% interest rate. The real property will be purchased for $7,200,000 by Ridge Realty Center, LLC and will be funded as follows: $1,440,000 in members' equity and a ten year $5,760,000 mortgage with a 20 year amortization schedule at a 5.75% interest rate. There are no project costs for this proposal.

Budget:		
	Revenues:	$9,964,281
	Expenses:	$9,493,324
	Gain/ (Loss)	$ 470,957

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

Recommendations

Health Systems Agency

There will be no HSA recommendation 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 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 working capital loan commitment, acceptable to the Department. [BFA]
4. 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, acceptable to the Department. Included with the submitted permanent mortgage commitment, must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
5. Submission of a photocopy of the executed operating agreement of the applicant, acceptable to the Department. [CSL]
6. Submission of a photocopy of the executed agreement of lease between River Ridge Realty, LLC and the applicant, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed restated articles of organization, acceptable to the Department. [CSL, BFA]
8. Submission of a photocopy of an executed certificate of dissolution or certificate of amendment to the articles of organization of River Ridge Living Center, LLC, acceptable to the Department. [CSL]
9. Submission of an executed and notarized Schedule 4B to the CON application, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013.

Need Analysis

Background

River Ridge Living Center entered into an asset purchase agreement with River Ridge Operating LLC to purchase the existing River Ridge Living Center, LLC, a 120 bed Article 28 residential health care facility located at 100 Sandy Drive Amsterdam, 12010, in Montgomery County.

Table 1: RHCF Need – Montgomery County

2016 Projected Need	515
Current Beds	590
Beds Under Construction	0
Total Resources	590
Unmet Need	-75

Analysis

River Ridge Living Center's utilization increased considerably from 2009 to 2011 while the Montgomery County average decreased, as shown in Table 2. Utilization at River Ridge was 89.7% in 2009, 96.1% in 2010, and 96.3% in 2011

Table 2: River Ridge Living Center /Montgomery County

Facility/County/Region	% Occupancy 2009	% Occupancy 2010	% Occupancy 2011
River Ridge Living Center	89.7%	96.1%	96.3%
Montgomery County	96.7%	93.9%	88.7%

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission polices and practices so that the proportion of its own annual Medicaid patients admissions is at least 75% of the planning area percentage of health Systems Agency percentage, whichever is applicable.

River Ridge Living Center's Medicaid admission percentage was below that of Montgomery County for 2009 and 2010 as indicated below.

River Ridge Living Center Medicaid admission percentage:
2009 –13.0%
2010 – 12.6%

Montgomery County 75% Medicaid admission percentage:
2009 – 16.0%
2010 – 31.4%

Conclusion

Approval of this project will help maintain the River Ridge Living Center facility as a needed resource for the community. The requirement for the operator to increase the facility's Medicaid admissions rate to at least 75 percent of the RHCF Medicaid admissions rate for Montgomery County will help expand access to RHCF care for Medicaid-eligible clients in the service area.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	**Proposed**
Facility Name	River Ridge Living Center	Same
Address	100 Sandy Drive Amsterdam, NY. 12010	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	River Ridge Living Center LLC Susanne Guttenberg 75% Paul Guttenberg 25%	River Ridge Operating LLC Managing Members: Benjamin Einhorn 25.0% Ruth Hirsch 25.0% Members Michael Braunstein 25.0% Edward Braunstein 25.0%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

The Grand Pavilion for Rehabilitation and Nursing at Rockville Center	08/2012 to present
Eastchester Rehabilitation and Health Care Center	08/2003 to present
Golden Gate Rehabilitation and Health Care Center	08/2003 to present
Nassau Extended Care Center	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing Care, LLC	10/2004 to present
The Hamptons Center for Rehabilitation and Nursing	05/2008 to present

Individual Background Review

Benjamin Einhorn is a New York State certified public accountant with his license currently inactive. He is currently employed as the assistant administrator at the Liberty House Nursing Home in Jersey City, New Jersey, and as the vice president of the Romerovski Corporation, a clothing exporter in Roselle Park, New Jersey. Mr. Einhorn discloses the following ownership interests:

The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present

Ruth Hirsch is employed as the admissions director of the White Plains Center for Nursing Care, LLC located in White Plains, New York. Ms. Hirsch discloses the following ownership interests:

Eastchester Rehabilitation and Health Care Center	09/2002 to present
Golden Gate Rehabilitation and Health Care Center	06/2002 to present
Nassau Extended Care Center	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Throgs Neck Extended Care Facility	07/2004 to present

Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing Care, LLC	10/2004 to present
The Hamptons Center for Rehabilitation and Nursing	05/2008 to present

Michael Braunstein is employed as the senior vice president of admissions, inventory, payroll, and marketing at the Liberty House Nursing and Rehabilitation Center located in Jersey City, New Jersey. He is also a senior vice president of the Romerovski Corporation, a clothing exporter in Roselle Park, New Jersey. Michael Braunstein is also a licensed notary public in the state of New Jersey and is considered to be in good standing. Michael Braunstein discloses no ownership interests in health facilities.

Edward Braunstein is employed as the senior vice president of accounts receivable, accounts payable, and payroll at the Liberty House Nursing and Rehabilitation Center located in Jersey City, New Jersey. He is also a senior vice president of the Romerovski Corporation, a clothing exporter in Roselle Park, New Jersey. Edward Braunstein discloses no ownership interests in health facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Eastchester Rehabilitation and Health Care Center for the period reveals that the facility was fined $2,000 pursuant to a Stipulation and Order issued August 9, 2008 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.4(b)(1)(ii) - Resident Behavior and Facility Practices: Staff Treatment of Residents.

A review of Golden Gate Rehabilitation and Health Care Center for the period identified above reveals that the facility was fined $20,000 pursuant to a Stipulation and Order issued July 9, 2009 for surveillance findings on June 27, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) - Quality of Care: Accidents; and 10 NYCRR 415.26 - Organization and Administration. The facility was also fined $10,000 pursuant to a Stipulation and Order issued December 16, 2011 for surveillance findings on November 24, 2010. Deficiencies were found under 10 NYCRR 415.12(c)(2) - Quality of Care: Pressure Sores.

A review of The Hamptons Center for Rehabilitation and Nursing for the period identified above reveals that the facility was fined $4,000 pursuant to a Stipulation and Order issued December 6, 2010 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) - Quality of Care: Accidents & Supervision; and 10 NYCRR 415.26 - Administration.

The facility was also fined $10,000 pursuant to Stipulation and Order issued May 24, 2011 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 - Provide Care/Services for Highest Well Being.

A review of operations for Eastchester Rehabilitation and Health Care Center, Golden Gate Rehabilitation and Health Care Center, and The Hamptons Center for Rehabilitation and Nursing results in a conclusion of a substantially consistent high level of care since there were no repeat enforcements.

A review of The Grand Pavilion for Rehabilitation and Nursing at Rockville Center, Nassau Extended Care Facility, Park Avenue Extended Care Facility, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, and White Plains Center for Nursing Care, LLC reveals that a substantially consistent high level of care since there were no enforcements for the time period reviewed.

Project Review

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.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Purchase/Sale Agreement for the Operations and Realty

The applicant has submitted an executed agreement to purchase the RHCF operating interest and realty, the terms of which are summarized below:

Date:	February 22, 2013
Seller Operations:	River Ridge Living Center, LLC
Seller Realty:	River Ridge Living Center, LLC and The Providers Network, LLC
Purchaser Operations:	River Ridge Operating, LLC d/b/a River Ridge Living Center
Purchaser Realty:	River Ridge Realty, LLC
Assets Transferred Operations:	All rights, title and interest in the business and operations, equipment, machinery and all tangible business personal property used in the operation of the business, contracts relating to the business, prepayments, trust funds and resident deposits, permits, inventory, computer software, business name, provider agreements and provider numbers, policies and procedures manuals, telephone numbers, residents records, employee records, business's records, domain names and rights, and goodwill
Asset Transferred Realty:	All rights, title and interest in piece and parcel of land known by the address 100 Sandy Drive, Amsterdam, New York 12010, consisting of approximately 30.58 acres; parking areas, fixtures, and other improvements; all easements, hereditaments, and appurtenances.
Excluded Assets:	Transactions relate to services rendered at the facility prior to closing.
Assumed Liabilities:	Assumed contracts and the assumed leases arising on or after the Closing Date.
Purchase Price:	$9,000,000 (allocation: Operations $1,800,000; Realty $7,200,000)
Payment of Purchase Price:	$450,000 escrow deposit at agreement signing $8,550,000 due at closing.

The purchase price is proposed to be satisfied as follows:

	Operations	**Realty**	**Total**
Equity-Members	$360,000	$1,440,000	$1,800,000
Mortgage – (10-year terms, 5.75%, 20-year amortization)	$1,440,000	$5,760,000	$7,200,000
Total	$1,800,000	$7,200,000	$9,000,000

BFA Attachment A is the proposed members' net worth summaries for both River Ridge Operating, LLC d/b/a River Ridge Living Center and River Ridge Realty, LLC. The members and their membership interest are the same for both entities. M & T Bank has provided a letter of interest at the above noted terms.

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. There are no outstanding Medicaid and Assessment liabilities as of June 6, 2013.

Lease Agreement and Medicaid Capital Reimbursement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Date:	March 1, 2013
Premises:	A 120-bed RHCF located at 100 Sandy Drive, Amsterdam, New York
Owner/Landlord:	River Ridge Realty, LLC
Lessee:	River Ridge Operating, LLC d/b/a River Ridge Living Center
Term:	Thirty-Five years
Rent:	Aggregate debt service payment plus $123,000, which equals $615,049 per year ($51,254.08 per month)
Provisions:	Triple net lease

The lease arrangement between the landlord, River Ridge Realty, LLC and the operator, River Ridge Operating, LLC d/b/a River Ridge Living Center, is a non-arm's length agreement.

Currently, Medicaid capital reimbursement is based on the return of and return on equity methodology, which will not be altered upon the change in ownership. Based on 2012 Nursing Home Consolidated Capital (Schedule VI – Property), all of the historical costs under the return of and return on capital have been reimbursed.

Operating Budget

The applicant has provided an operating budget, in 2013 dollars, for the first year subsequent to the change in ownership. The budget is summarized below:

	Per Diem	**Total**
Revenues:		
Medicaid	$172.60	$4,953,275
Medicare	501.82	2,812,722
Private Pay	241.46	1,900,296
Assessment Revenue	10.38	297,988
Total Revenues:		$9,964,281
Expenses:		
Operating		$8,729,075
Capital		764,248
Total Expenses:		$9,493,323
Net Income:		$470,958
Utilization (resident days)		42,173
Occupancy		96.29%

The following is noted with respect to the submitted operating budget:

- Medicaid revenues are based on actual 2013 rates.
- Medicare rates are based actual rates trended to 2013
- Private rates are based actual rates trended to 2013.
- Overall utilization is projected at 96.29%. Utilization for the five years from 2008 through 2012 averaged 95.93%.
- Utilization by payor source is anticipated as follows:

Medicaid Fee-for-Service	68.05%
Medicare Fee-for-Service	13.29%
Private/Other	18.66%

- Breakeven utilization is projected at 91.74%.

Capability and Feasibility

River Ridge Operating, LLC d/b/a River Ridge Living Center proposes to acquire the operating assets of River Ridge Living Center, LLC, a 120-bed RHCF for $1,800,000. The members will contribute $360,000 in equity and enter into a proposed mortgage with M &T Bank for $1,440,000 at the above stated terms. Concurrent with the asset purchase agreement, the proposed landlord, River Ridge Realty, LLC will enter into an agreement with River Ridge Living Center, LLC and The Providers Network, LLC to acquire the RHCF's real property for $7,200,000. Funding for this real estate transaction will be as follows: members will contribute $1,440,000 in equity and enter into a proposed mortgage with M & T Bank for $5,760,000 at the above state terms. There are no project costs associated with this proposal.

Working capital is estimated at $1,582,220 and is based on two months of the first year expenses: half, or $791,110 will be satisfied from members' equity. The remaining $791,110 will be satisfied through a five year loan at 5.26% from M&T Bank.

BFA Attachment B is the pro-forma balance sheet for River Ridge Operating, LLC d/b/a River Ridge Living Center, which shows the entity will start off with $1,151,110 in equity. Total assets include $1,800,000 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. If goodwill was eliminated from the equation, then the total net assets would become a negative $648,890.

The submitted budget indicates $470,958 in net income would be generated in the first year after the change in ownership. The following is a comparison of the 2011 historical and projected revenue and expense:

Projected Income	$ 9,964,281
Projected Expense	9.493,323
Projected Net Income	$470,958
Annual 2011 Income	$10,683,971
Annual 2011 Expense	10,070,321
Annual 2011 Net Income (Loss)	$613,650
Incremental Net Income (Loss)	$(142,692)

It is estimated that incremental net revenue for all payors will decrease by approximately $719,690, as the results of the following: Medicaid revenues are expected to decrease by $812,102 as the results of a decline in the average daily rate, going from $211.28 per patient day in 2011, to $172.60 per patient day in 2013; and over the same period Medicare and private pay revenues are expected to increase approximately 2% or $55,151 and $37,261, respectively. Utilization is not expected to change. Expenses are expected to decrease approximately $576,997, which represents management fees paid by the current operators to themselves. The budget appears reasonable.

Staff notes that with the expected 2014 implementation of managed care for nursing home residents, Medicaid reimbursement is expected to change from a state-wide price with cost-based capital component payment methodology to a negotiated reimbursement methodology. Facility payments will be the result of negotiations between the managed long term care plans and the facility. At this point in time, it cannot be determined what financial impact this change in reimbursement methodology will have on this project.

As shown on BFA Attachment C, River Ridge Living Center, LLC, for the years 2010 through 2012, generated an average operating surplus of $321,967, had an average positive net asset position of $441,591, and as of December 31, 2012, it had a positive working capital position of $1,438,183. Average occupancy during this period was 95.17%.

As shown on BFA Attachment D, Eastchester Rehabilitation and Health Care Center, LLC, for the years 2010 through 2012, generated an average operating surplus of $960,585, had an average positive net asset position of $8,094,728, and had an average negative working capital position of $3,466,630. Average occupancy during this period was 94.63%.

As shown on BFA Attachment E, Golden Gate Rehabilitation and Health Care Center, LLC, for the years 2010 through 2012, generated an average operating surplus of $1,571,492, had an average positive net asset position of $11,931,216, and its working capital position turned to a positive $683,310 in 2012, making the average working capital for the period 2010-2012 $43,365. Average occupancy during this period was 96.50%.

As shown on BFA Attachment F, Nassau Operating Company, LLC d/b/a Nassau Extended Care Facility, for the years 2010 through November 30, 2012, generated an average operating surplus of $607,015, had an average positive working capital position of $3,904,371, and had an average positive net asset position of $13,697,810. Average occupancy during this period was 92.54%.

As shown on BFA Attachment G, Park Avenue Operating Co., LLC d/b/a Park Avenue Extended Care Facility, for the years 2010 through November 30, 2012, generated an average operating surplus of $361,424, had an average positive working capital position of $2,464,126, and had an average positive net asset position of $10,135,508. Average occupancy during this period was 93.13%.

As shown on BFA Attachment H, Throgs Neck Operating Company, LLC d/b/a Throgs Neck Extended Care Facility, for the years 2010 through November 30, 2012, generated an average operating surplus of $600,364, had an average positive net asset position of $4,425,313, and had an average negative working capital position of $1,089,768. Average occupancy during this period was 96.11%.

As shown on BFA Attachment I, Townhouse Operating Company, LLC d/b/a Townhouse Center for Rehabilitation & Nursing, for the years 2010 through October 31, 2012, generated an average positive operating surplus of $101,424, had an average positive net working capital position of $1,675,708, and had an average net asset position of $4,239,528. Average occupancy during this period was 95.39%.

As shown on BFA Attachment J, White Plains Center For Nursing Care, LLC d/b/a White Plains Center for Nursing, for the years 2010 through November 30, 2012, generated an average operating surplus of $735,280, had an average positive net asset position of $2,032,113, and as of November 30, 2012, had a negative working capital position of $736,898. Average occupancy during this period was 92.20%.

As shown on BFA Attachment K, North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing, for the years 2010 through 2012, generated an average operating surplus of $4,313,340, had an average negative net asset position of $10,492,701, and as of December 32, 2012, had a positive working capital position of $2,326,984. The applicant states after years of struggling to open this new facility and generating significant operating losses during the startup period, the facility has achieved financial viability and is generating operating surpluses, which has brought the negative assets position down from $13,452,020 in 2009, to a negative $5,223,019 at the end of 2012. Average occupancy during this period was 94.05%.

As shown on BFA Attachment L, Rockville Operating, LLC d/b/a the Brand Pavilion for Rehab and Nursing at Rockville Center, started operations on August 6, 2012, and therefore the following results are for the period from August 6, 2012 through November 30, 2012. During this period the RHCF had an operating surplus of $328,595, had a negative working capital position of $1,972,253, and had a positive net asset position of $6,380,883. Occupancy during this period was 96.72%.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members
BFA Attachment B	Pro-forma Balance Sheet, River Ridge Operating, LLC d/b/a River Ridge Living Center
BFA Attachment C	Financial Summary, River Ridge Living Center, LLC
BFA Attachment D	Financial Summary, Eastchester Rehabilitation and Health Care Center, LLC
BFA Attachment E	Financial Summary, Golden Gate Rehabilitation and Health Care Center, LLC
BFA Attachment F	Financial Summary, Nassau Operating Company, LLC d/b/a Nassau Extended Care Facility
BFA Attachment G	Financial Summary, Park Avenue Operating Co., LLC d/b/a Park Avenue Extended Care Facility
BFA Attachment H	Financial Summary, Throgs Neck Operating Company, LLC d/b/a Throgs Neck Extended Care Facility
BFA Attachment I	Financial Summary, Townhouse Operating Company, LLC d/b/a Townhouse Center for Rehabilitation & Nursing
BFA Attachment J	Financial Summary, White Plains Center for Nursing Care, LLC d/b/a White Plains Center for Nursing
BFA Attachment K	Financial Summary, North Sea Associates, LLC d/b/a The Hamptons Center for Rehabilitation and Nursing
BFA Attachment L	Financial Summary, Rockville Operating, LLC d/b/a The Brand Pavilion for Rehab and Nursing at Rockville Center

Public Health and Health Planning Council

Project #132079-E

Auburn Senior Services, Inc.

County: **Cayuga County**
Purpose: **Establishment**

Program: **Residential Health Care Facility**
Submitted: **July 31, 2013**

Executive Summary

Description

Auburn Senior Services, Inc., a to-be-formed not-for-profit corporation, requests approval to be established as the operator of Cayuga County Nursing Home, an 80-bed county owned skilled nursing facility located at 7451 County House Road, Auburn, New York. The sole corporate member of Auburn Senior Services, Inc., Loretto Management Corporation, Inc. seeks establishment as the active parent of Auburn Senior Services, Inc. The applicant will not be purchasing the real estate as part of this application. There will be no change in services provided. The applicant entered into a transfer agreement, dated July 30, 2013, with Cayuga County to acquire the operating assets related to the Cayuga County Nursing Home.

CON 132093 is being reviewed concurrent with this project and requests approval for the establishment of Auburn Senior Services as operator of Mercy, the establishment of Loretto as the active parent/co-operator, the renovation and expansion of Mercy by adding a 60-bed wing for a total of 300 beds, and the transfer of beds from Cayuga County Nursing Home.

The current and proposed operator is as follows:

Current	Proposed
Cayuga County Nursing Home	Auburn Senior Services, Inc.

DOH Recommendation

Contingent Approval

Need Summary

There will be no change in services as a result of this project. Cayuga County Nursing Home's utilization was 94.4% in 2009, 95.4% in 2010, and 94.7% in 2011. Due to financial concerns, Cayuga County Nursing Home is transferring ownership to ensure continued access to nursing home services in the community.

Program Summary

No negative information has been received concerning the character and competence of the proposed directors.

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

There is no purchase price associated with this application.

There are no budgets for this application, since this facility will be combined with the Mercy Health & Rehab Center NH, Inc. The total budgets are reflected in CON# 132093.

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. 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 an executed Certificate of Amendment of the Certificate of Incorporation of Auburn Senior Services, Inc., acceptable to the Department. [CSL]
4. Submission of a clarification to the Transfer Agreement, acceptable to the Department. [CSL]
5. Submission of a list of the name and position held for each officer, acceptable to the Department. [CSL]
6. Submission of evidence of site control, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed with in two years 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

October 3, 2013

Need Analysis

Analysis

There is currently a surplus of 27 beds in Cayuga County as indicated in Table 1 below. The overall occupancy for Cayuga County is 90.0% for 2011 as indicated in Table 2.

Table 1: RHCF Need – Cayuga County

2016 Projected Need	502
Current Beds	529
Beds Under Construction	0
Total Resources	529
Unmet Need	-27

Cayuga County Nursing Home's utilization was 94.4% in 2009, 95.4% in 2010, and 94.7% in 2011. This is higher than the County's utilization rate but is lower than the Department's planning optimum 97% utilization rate. Cayuga County nursing home is in distress and as a result must either transfer ownership or close the facility.

Table 2: Cayuga County Nursing Home/Cayuga County Occupancy

Facility/County	2009	2010	2011
Cayuga County Nursing Home	94.4%	95.4%	94.7%
Cayuga County	90.8%	90.0%	90.0%

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 patient's admissions is at least 75% of the planning area percentage of Health Systems Agency percentage, whichever is applicable.

Cayuga County Nursing Home's Medicaid admissions were 12.37% in 2010 and 29.73% in 2011. While Cayuga County Nursing Home did not exceed the Cayuga County 75% rate of 15.80% in 2010, it did exceed the 75% rate of 16.98% in 2011.

Conclusion

Approval of this application, in conjunction with CON #132093, will result in higher, more efficient utilization of RHCF beds in Cayuga County and help maintain a needed long-term care resource for the area's aging adult and Medicaid-eligible populations.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Cayuga County Nursing Home	TBD
Address	7451 County House Road Auburn, NY 13021	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Not-For-Profit Corporation
Class of Operator	Public	Voluntary
Operator	Cayuga County Nursing Home County House Rd Drawer E Sennett, New York 13150	Auburn Senior Services, Inc Directors: Michael H. Chapman, Sr. Raymond R. D'Agostino Msgr. Charles Fahey Ms. Joann Lloyd Sr. Kathleen Osbelt Sole Corporate Member Loretto Management Corporation Board of Trustees: Kevin M. Bryans David J. Gosch Joyce G. Carmen John R. Brennan Helene A. Wallace Ellen M. O'Connor Christine W. Dettor Vicki H. O'Neill Susan Clancy-Magley Pierre J. Morrisseau F. Philip Kessler, Jr. Kimberly M. Townsend

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Village Care Rehabilitation and Nursing Center	08/2003 to 01/2008
Isabella Geriatric Center	08/2003 to present
Mary Manning Walsh Nursing Home	01/2008 to present
Terence Cardinal Cooke Health Care Center	01/2008 to present
Ferncliff Nursing Home	01/2008 to present
St Vincents Depaul Skilled Nursing and Rehabilitation Center	01/2008 to present
Carmel Richmond Healthcare and Rehabilitation Center	01/2008 to present
Kateri Residence	01/2008 to present
Highland Rehabilitation & Nursing Center	01/2008 to present
Nottingham RHCF	08/2003 to present
Loretto Health and Rehabilitation Center	08/2003 to present

Adult Care Facilities	
Buckley Landing EHP	08/2003 to present
Bernadine Apartments ALP	08/2003 to present
Sedgewick Heights ALP	08/2003 to present
Heritage Apartments ALP	08/2003 to present
Loretto Nottingham EHP	08/2003 to present
Diagnostic and Treatment Centers	
Loretto Geriatric Center DTC	08/2003 to present
Licensed Home Care Services Agencies	
Loretto Geriatric Center LHCSA	08/2003 to present
Franciscan Collaborative-Home Health Care	01/1011 to present
Hospitals	
St. Joseph's Hospital - Syracuse	08/2003 to 01/2006

Individual Background Review

Michael H. Chapman, Sr. is currently a county legislator in Cayuga County. He was employed as an insurance investigator at Paul Clapper and Associates from 2011 to 2012. Mr. Chapman discloses no health facility interests.

Raymond R. D'Agostino is an attorney in good standing. Mr. D'Agostino is a partner at the law firm of Hancock Estabrook, LLP, where he is the chair for the health law department. Mr. D'Agostino discloses no health facility interests.

Msgr. Charles Fahey is retired, formerly employed as a professor at Fordham University. Msgr. Fahey discloses he is a director on the following health facility boards:

Village Care Rehabilitation and Nursing Center	01/2000-01/2008
Isabella Geriatric Center	01/1995 to present
Mary Manning Walsh Nursing Home	01/2008 to present
Terence Cardinal Cooke Health Care Center	01/2008 to present
Ferncliff Nursing Home	01/2008 to present
St Vincents Depaul Skilled Nursing and Rehabilitation Center	01/2008 to present
Carmel Richmond Healthcare and Rehabilitation Center	01/2008 to present
Kateri Residence	01/2008 to present
Highland Rehabilitation & Nursing Center (formerly St Teresa's Nursing & Rehab)	01/2008 to present

Joann Lloyd is a licensed registered nurse in good standing. Ms. Lloyd reveals no employment history for the past ten years. Ms. Lloyd discloses no health facility interests.

Sr. Kathleen Osbelt (Sister Ann Mathew Osbelt**)** is the Director of Mission Integration at the Partners in Franciscan Ministries since 2011. Prior to this position she was the Executive Director for the Francis House, a shelter facility in Syracuse, from 1991 to 2011. Sr. Osbelt discloses the following health facility interest:

St. Joseph's Hospital (Board Member)	01/2000 to 01/2006

Ellen M. O'Connor (Snakard, Gall) is a certified public accountant in good standing in Connecticut. Ms. O'Connor has been employed with Dairylea Cooperative, Inc., since December 2001, as Chief Financial Officer. Ms. O'Connor discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2004 to present

Helene A. Wallace has been employed by Stephen Nash, M.D. since 1972 as a medical assistance and research coordinator. Ms. Wallace discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2005 to present

John R. Brennan is an attorney in good standing in New York and Massachusetts. Mr. Brennan is a partner, since 1986, at the law firm of Byrne, Costello & Packard, P.C. Mr. Brennan discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2013 to present

Joyce G. Carmen (Goldberg) holds an active NYS Permanent Teaching Certificate, in good standing, in education speech for the hard of hearing. Ms. Carmen reveals she is retired, and discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2006 to present

David Jeffrey Gosch is an attorney in good standing, practicing law at his own firm since 1982. Mr. Gosch is the Town of Clay Justice since 2011. Mr. Gosch discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2000 to present

Kevin M. Bryans is a certified public accountant in good standing. He is a stockholder and employed as chief financial officer at Polaris Library Systems since 2010. Mr. Bryans discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2013 to present

Christine Woodcock Dettor is an attorney in good standing in New York and Massachusetts. She is an associate attorney at Bousquet Holstein, PLLC since 1996. Ms. Dettor discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2013 to present

Vicki H. O'Neill (Hunt) is employed as the chief executive officer at ACMG Federal Credit Union in Solvay, NY, since 1979. Ms. O'Neill discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2009 to present

Susan Clancy-Magley is employed as the executive director, since 2011, for the project "Embracing Age" at Franciscan Companies. Embracing Age provides a unique person-centered plan to keep elders living at home for as long as possible including cultural and recreational activities, transportation and spiritual care. Ms. Clancy-Magley discloses the following health facility interests:

Franciscan Collaborative-Home Health Care (Exec Director)	01/1011 to present
Loretto Management Corporation (Trustee)	01/2009 to present

Pierre J. Morrisseau is employed as the chief executive officer at Bailey, Haskell & LaLonde Insurance & Risk Management since 2003. Mr. Morrisseau is a past board member at Vera House, a domestic and sexual violence service agency in Syracuse. Mr. Morrisseau discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2011 to present)

F. Philip Kessler, Jr. is a licensed insurance agent in good standing with chartered financial consultant and chartered life underwriter certifications. He is employed in insurance sales for New England Financial since 1965. Mr. Kessler discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/1992 to present

Kimberly Menard Townsend (Gruninger) is a certified public accountant in good standing in Illinois. She is an attorney in good standing in New Jersey, New York and District of Columbia. Ms. Townsend is currently an associate general counsel and senior director of government affairs for the manufacturing company Welch Allyn, Inc. since 2000. Ms. Townsend discloses the following health facility interest:

Loretto Management Corporation (Trustee)	02/2005 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the noted trustees.

A review of Terence Cardinal Cooke Health Care Center for the period identified above reveals the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order issued February 3, 2009 for surveillance findings on March 18, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents, 415.26 Organization and Administration, and 415.26(b)(3) Organization and Administration: Governing Body.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued September 26, 2011 for surveillance findings on April 9, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

A review of Kateri Residence for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order issued March 8, 2009 for surveillance findings on March 28, 2008. Deficiencies were found under 10 NYCRR, 415.12 Quality of Care and 415.12(h)(1)(2) Quality of Care: Accidents.

A review of Ferncliff Nursing Home for the period identified above reveals the following:

- The facility was fined $20,000 pursuant to a Stipulation and Order issued February 27, 2013 for surveillance findings on April 27, 2011. Deficiencies were found under 10 NYCRR, 415.11(c)(3)(i) Services Meets Professional Standards, 415.12 Quality of Care Highest Practicable Potential, 415.15(b)(2)(ii) Physician Visits Review Notes/Care/Orders, 415.18(c)(2) Drug Regimen Review-Report Irregular-Act On, 415.15(a) Medical Director and 415.26 Administration.

A review of Loretto Health and Rehabilitation Center for the Period Identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued April 3, 2007 for surveillance findings on July 7, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.12(m)(2) Quality of Care: Medication Errors.

A review of operations for Isabella Geriatric Center, Village Care Rehabilitation and Nursing Center, Mary Manning Walsh Nursing Home, St Vincents Depaul Skilled Nursing and Rehabilitation Center, Carmel Richmond Healthcare and Rehabilitation Center, Highland Rehabilitation & Nursing Center and Nottingham RHCF 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 Terence Cardinal Cooke Health Care Center, Ferncliff Nursing Home, Kateri Residence, and Loretto Health and Rehabilitation Center for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for St. Joseph's Hospital for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Bernadine Apartments Assisted Living Program (ALP) for the period identified above reveals the following:

- The facility was fined $1,000 pursuant to a Stipulation and Order for surveillance findings, on August 6, 2013, for violations in resident protections and resident services.

A review of operations for Sedgewick Heights Assisted Living Program (ALP) for the period identified above reveals the following:

- The facility was fined $1,000 pursuant to a Stipulation and Order for surveillance findings, on February 5, 2010, for violations in resident services.

A review of operations for Loretto Nottingham (EHP) for the period identified above reveals the following:

- The facility was fined $22,650 pursuant to a Stipulation and Order for surveillance findings on January 1, 2012 and July 11 with violations found under 18 NYCRR Part 488.

A review of operations for Buckley Landing EHP, Heritage Apartments ALP, Loretto Geriatric Center DTC, and Loretto Geriatric Center LHCSA results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Bernadine Apartments ALP, Sedgewick Heights ALP, and Loretto Nottingham EHP results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

Project Review

The initial Board of Directors for Auburn Senior Services, Inc. shall be comprised of five (5) Directors with a maximum expansion to thirteen (13) Directors. The Board shall maintain (to the extent possible) a ratio of 3:1:1 with three (3) persons recommended by LMC; one (1) recommended by the Cayuga County Legislature; and one recommended by the Sisters of St. Francis of the Neumann Communities. The Directors appointed by LMC shall exceed the number of Directors appointed by the Cayuga County Legislature and Sisters of St. Francis of the Neumann Communities by 1. At all times, a majority of the persons recommended by LMC must be residents of Cayuga County.

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Transfer Agreement

The applicant has submitted an executed transfer agreement for the acquisition of the nursing home:

Date:	July 30, 2013
Grantor:	Cayuga County Nursing Home
Grantee:	Auburn Senior Services, Inc. and Loretto Management Corporation, Inc.
Assets Transferred:	Grantor hereby agrees to transfer and convey to Grantee, all of its right, title and interest in the operation of the 80 bed residential health care facility.
Liabilities Assumed:	Grantee shall assume Grantor's Medicaid and Medicare provider agreements and as such, will be responsible for any Medicaid and/or Medicare liabilities, both known or unknown.
Consideration:	$0

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding liabilities.

Capability and Feasibility

There is no purchase price associated with this application. There are no budgets or working capital requirements since this facility will be combined with Mercy Health & Rehab Center, Inc. (CON#132093).

BFA Attachment A are the 2011 and 2012 certified financial statements of Cayuga County Nursing Home. As shown, the facility had an average positive working capital position and an average positive net asset position from 2011 through 2012. Also, the facility incurred an average loss from operations of $440,516 from 2011 through 2012. The applicant has indicated that the reason for the losses are a result of the following: Medicaid and Medicare rate reductions, which resulted in a Medicaid rate lower than the average operating expense per day, and operating expenses increased due to an increase in retirement and health care costs.

Presented as BFA Attachment B are the June 30, 2013 internal financial statements of Cayuga County Nursing Home. As shown, the facility had a positive working capital position and a positive net asset position through June 30, 2013. Also, the facility achieved an excess of revenues over expenses of $280,724 through June 30, 2013.

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- Cayuga County Nursing Home
BFA Attachment B	Financial Summary- June 30, 2013 internal financial statements of Cayuga County Nursing Home.

Public Health and Health Planning Council

Project #132093-B

Auburn Senior Services, Inc.

County: **Cayuga County**
Purpose: **Establishment and Construction**

Program: **Residential Health Care Facility**
Submitted: **August 9, 2013**

Executive Summary

Description

Auburn Senior Services, Inc., a not-for-profit corporation, requests approval to be established as the operator of Mercy Nursing and Rehabilitation Center Nursing Home, a 237-bed not-for-profit skilled nursing facility located at 3 St. Anthony Street, Auburn, New York. The sole corporate member of Auburn Senior Services, Inc., Loretto Management Corporation, Inc. seeks establishment as the active parent of Auburn Senior Services, Inc. The applicant will be purchasing the real estate as part of this application. There will be no change in services provided. The applicant entered into a transfer agreement, dated August 7, 2013, with Mercy Health & Rehab Center Nursing Home, Inc. to acquire the operating assets related to the operation of Mercy Nursing and Rehabilitation Center Nursing Home. BFA Attachment F is the organizational chart for Loretto.

This application entails the renovation and expansion of Mercy, adding a 60-bed wing to accommodate the transfer of the beds from Cayuga County Nursing Home. The nursing home will also consist of 50-slot adult day health care program. As renovations and the consolidation of the two entities are completed, the applicant will decertify 17 beds to bring the total to 300 RHCF beds.

Auburn Senior Services has submitted CON #132079 for the change in operator of Cayuga Nursing Home, an 80-bed county-owned nursing home. This application is being processed concurrently with this project.

The current and proposed operator is as follows:

Current	Proposed
Mercy Health & Rehab Center, Inc.	Auburn Senior Services, Inc.

DOH Recommendation

Contingent Approval

Need Summary

There will be no change in services at the Mercy site as a result of this project. Utilization at the Mercy Health and Rehabilitation Center Nursing Home was 87.5% in 2009, 85.8% in 2010 and 86.5% in 2011. The applicant anticipates that the proposed renovation and expansion of the facility, together with the transfer of the beds from Cayuga County Nursing Home, will lead to a 94% occupancy rate for the consolidated 300 beds at the Mercy site.

Program Summary

The renovation and expansion of Mercy will result in a significantly improved residential environment, and the critical issues regarding the infrastructure and safety items will be addressed. The 60-bed wing will result in the replacement of the obsolete County nursing home building, and will provide County residents access to modern rehabilitation services. No negative information has been received concerning the character and competence of the proposed directors.

Financial Summary

There is no purchase price associated with this application. The total project cost is $22,361,440 and will be financed via a FHA 232 GNMA-insured mortgage at an interest rate of 5% for a 30 year term.

Budget:

Revenues	$28,178,165
Expenses	27,819,552
Excess of Revenues over Expenses	$358,613

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.

Recommendations

Health Systems Agency

The Central New York HSA recommends Approval.

Office of Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
3. Submission of a plan to 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]
4. 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, acceptable to the Department. 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]
5. Submission of a working capital loan commitment, acceptable to the Department. [BFA]
6. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
7. Submission and programmatic approval of final floor plans. [LTC]
8. Submission and approval of an acceptable name for the nursing home. [LTC]
9. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Auburn Senior Services, Inc., acceptable to the Department. [CSL]
10. Submission of a clarification to the Transfer Agreement, acceptable to the Department. [CSL]
11. Submission of a list of the name and position held for each officer and trustee, acceptable to the Department. [CSL]
12. Submission of the Certificate of Amendment Articles of Organization or Certificate of Dissolution for Mercy Health and Rehabilitation Center, acceptable to the Department. [CSL]
13. Submission of evidence of site control, acceptable to the Department. [CSL]
14. 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 April 6, 2015 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
3. Submission of and approval of the patient safety plan by the Central New York Regional Office, prior to the commencement of construction. The plan should identify the necessary measures to ensure residents will not be exposed to asbestos fibers, and seek to minimize the relocation of residents within the nursing home. [LTC]

Council Action Date
October 1, 2013.

Need Analysis

Analysis

There will be a surplus of 10 beds in Cayuga County, as indicated in Table 1 below. The overall occupancy for Cayuga County was 90.0% for 2011, as indicated in Table 2.

Table 1: RHCF Need – Cayuga County

2016 Projected Need	502
Current Beds	529
Beds Under Construction	0
Total Resources	529
Proposed Bed Reduction	17
Unmet Need	-10

Mercy Health and Rehabilitation Center Nursing Home's utilization was 87.5% in 2009, 85.8% in 2010, and 86.5% in 2011. Mercy's three-year average utilization was 86.6%.

Table 2: Mercy Health and Rehabilitation Center Nursing Home/Cayuga County Occupancy

Facility/County	2009	2010	2011
Mercy Health and Rehabilitation Center Nursing Home, Inc	87.5%	85.8%	86.5%
Cayuga County	90.8%	90.0%	90.0%

As shown in Table 3, the applicant expects that occupancy at the Mercy site will progress to 94 percent in 2015. This is because the updated state-of-the-art facility resulting from this project is expected to attract more short-term stay residents and to reduce the migration of Cayuga County residents to nursing homes in Syracuse, Rochester and other locations outside the county (currently 105 residents of Cayuga County are in nursing homes in other jurisdictions).

Table 3: Mercy Health and Rehabilitation Center Nursing Home/Cayuga County Occupancy

Facility/County	2013	2014	2015
Mercy Health and Rehabilitation Center Nursing Home, Inc.	89.0%	78.0%	94.0%
Cayuga County	93.0%	93.0%	93.0%

The decline in occupancy from 2013 to 2014 will result from the need to take two residential floors off-line while renovations are being undertaken.

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 patient's admissions is at least 75% of the planning area percentage of Health Systems Agency percentage, whichever is applicable.

Mercy Health and Rehabilitation Center Nursing Home's Medicaid admissions of 27.36% in 2010 and 27.73% in 2011 exceeds the Cayuga County 75% rate of 15.80% in 2010 and 16.98% in 2011.

Conclusion

Approval of this application, in conjunction with CON #132079, will result in higher, more efficient utilization of RHCF beds in Cayuga County and will help maintain a needed long-term care resource for the area's adult and Medicaid-eligible populations.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Facility Information

	Existing	Proposed
Facility Name	Mercy Health and Rehab Center NH, Inc.	TBD
Address	3 Anthony Street Auburn, NY 13021	Same
RHCF Capacity	237	300
ADHC Program Capacity	50	Same
Type of Operator	Not-For-Profit Corporation	Not-For-Profit Corporation
Class of Operator	Voluntary	Voluntary
Operator	Mercy Health and Rehab Center NH Inc.	Auburn Senior Services, Inc Directors Michael H. Chapman, Sr. Raymond R. D'Agostino Msgr. Charles Fahey Ms. Joann Lloyd Sr. Kathleen Osbelt Sole Corporate Member Loretto Management Corporation Board of Trustees Kevin M. Bryans David J. Gosch Joyce G. Carmen John R. Brennan Helene A. Wallace Ellen M. O'Connor Christine W. Dettor Vicki H. O'Neill Susan Clancy-Magley Pierre J. Morrisseau F. Philip Kessler, Jr. Kimberly M. Townsend

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Village Care Rehabilitation and Nursing Center	08/2003 to 01/2008
Isabella Geriatric Center	08/2003 to present
Mary Manning Walsh Nursing Home	01/2008 to present

Terence Cardinal Cooke Health Care Center	01/2008 to present
Ferncliff Nursing Home	01/2008 to present
St Vincent DePaul Skilled Nursing and Rehabilitation Center	01/2008 to present
Carmel Richmond Healthcare and Rehabilitation Center	01/2008 to present
Kateri Residence	01/2008 to present
Highland Rehabilitation & Nursing Center	01/2008 to present
Nottingham RHCF	08/2003 to present
Loretto Health and Rehabilitation Center	08/2003 to present
Adult Care Facilities	
Buckley Landing EHP	08/2003 to present
Bernadine Apartments ALP	08/2003 to present
Sedgewick Heights ALP	08/2003 to present
Heritage Apartments ALP	08/2003 to present
Loretto Nottingham EHP	08/2003 to present
Diagnostic and Treatment Centers	
Loretto Geriatric Center DTC	08/2003 to present
Licensed Home Care Services Agencies	
Loretto Geriatric Center LHCSA	08/2003 to present
Franciscan Collaborative-Home Health Care	01/1011 to present
Hospitals	
St. Joseph's Hospital - Syracuse	08/2003 to 01/2006

Individual Background Review

Michael H. Chapman, Sr. is currently a county legislator in Cayuga County. He was employed as an insurance investigator at Paul Clapper and Associates from 2011 to 2012. Mr. Chapman discloses no health facility interests.

Raymond R. D'Agostino is an attorney in good standing. Mr. D'Agostino is a partner at the law firm of Hancock Estabrook, LLP, where he is the chair for the health law department. Mr. D'Agostino discloses no health facility interests.

Msgr. Charles Fahey is retired, formerly employed as a professor at Fordham University. Msgr. Fahey discloses he is a director on the following health facility boards:

Village Care Rehabilitation and Nursing Center	01/2000 to 01/2008
Isabella Geriatric Center	01/1995 to present
Mary Manning Walsh Nursing Home	01/2008 to present
Terence Cardinal Cooke Health Care Center	01/2008 to present
Ferncliff Nursing Home	01/2008 to present
St Vincent DePaul Skilled Nursing and Rehabilitation Center	01/2008 to present
Carmel Richmond Healthcare and Rehabilitation Center	01/2008 to present
Kateri Residence	01/2008 to present
Highland Rehabilitation & Nursing Center (formerly St Teresa's Nursing & Rehab)	01/2008 to present

Joann Lloyd is a licensed registered nurse in good standing. Ms. Lloyd reveals no employment history for the past ten years. Ms. Lloyd discloses no health facility interests.

Sr. Kathleen Osbelt (Sister Ann Mathew Osbelt**)** is the Director of Mission Integration at the Partners in Franciscan Ministries since 2011. Prior to this position she was the Executive Director for the Francis House, a shelter facility in Syracuse, from 1991 to 2011. Sr. Osbelt discloses the following health facility interest:

St. Joseph's Hospital (Board Member)	01/2000 to 01/2006

Ellen M. O'Connor (Snakard, Gall) is a certified public accountant in good standing in Connecticut. Ms. O'Connor has been employed with Dairylea Cooperative, Inc., since December 2001, as Chief Financial Officer. Ms. O'Connor discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2004 to present

Helene A. Wallace has been employed by Stephen Nash, M.D. since 1972 as a medical assistance and research coordinator. Ms. Wallace discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2005 to present

John R. Brennan is an attorney in good standing in New York and Massachusetts. Mr. Brennan is a partner, since 1986, at the law firm of Byrne, Costello & Packard, P.C. Mr. Brennan discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2013 to present

Joyce G. Carmen (Goldberg) holds an active NYS Permanent Teaching Certificate, in good standing, in education speech for the hard of hearing. Ms. Carmen reveals she is retired, and discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2006 to present

David Jeffrey Gosch is an attorney in good standing, practicing law at his own firm since 1982. Mr. Gosch is the Town of Clay Justice since 2011. Mr. Gosch discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2000 to present

Kevin M. Bryans is a certified public accountant in good standing. He is a stockholder and employed as chief financial officer at Polaris Library Systems since 2010. Mr. Bryans discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2013 to present

Christine Woodcock Dettor is an attorney in good standing in New York and Massachusetts. She is an associate attorney at Bousquet Holstein, PLLC since 1996. Ms. Dettor discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2013 to present

Vicki H. O'Neill (Hunt) is employed as the chief executive officer at ACMG Federal Credit Union in Solvay, NY, since 1979. Ms. O'Neill discloses the following health facility interest:

Loretto Management Corporation (Trustee)	01/2009 to present

Susan Clancy-Magley is employed as the executive director, since 2011, for the project "Embracing Age" at Franciscan Companies. Embracing Age provides a unique person-centered plan to keep elders living at home for as long as possible including cultural and recreational activities, transportation and spiritual care. Ms. Clancy-Magley discloses the following health facility interests:

Franciscan Collaborative-Home Health Care (Exec Director)	01/1011 to present
Loretto Management Corporation (Trustee)	01/2009 to present

Pierre J. Morrisseau is employed as the chief executive officer at Bailey, Haskell & LaLonde Insurance & Risk Management since 2003. Mr. Morrisseau is a past board member at Vera House, a domestic and sexual violence service agency in Syracuse. Mr. Morrisseau discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/2011 to present)

F. Philip Kessler, Jr. is a licensed insurance agent in good standing with chartered financial consultant and chartered life underwriter certifications. He is employed in insurance sales for New England Financial since 1965. Mr. Kessler discloses the following health facility interest:

Loretto Management Corporation (Trustee)	06/1992 to present

Kimberly Menard Townsend (Gruninger) is a certified public accountant in good standing in Illinois. She is an attorney in good standing in New Jersey, New York and District of Columbia. Ms. Townsend is currently an associate general counsel and senior director of government affairs for the manufacturing company Welch Allyn, Inc. since 2000. Ms. Townsend discloses the following health facility interest:

Loretto Management Corporation (Trustee) 02/2005 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the noted trustees.

A review of Terence Cardinal Cooke Health Care Center for the period identified above reveals the following:

- The facility was fined $6,000 pursuant to a Stipulation and Order issued February 3, 2009 for surveillance findings on March 18, 2008. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents, 415.26 Organization and Administration, and 415.26(b)(3) Organization and Administration: Governing Body.
- The facility was fined $2,000 pursuant to a Stipulation and Order issued September 26, 2011 for surveillance findings on April 9, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care Highest Practicable Potential.

A review of Kateri Residence for the period identified above reveals the following:

- The facility was fined $4,000 pursuant to a Stipulation and Order issued March 8, 2009 for surveillance findings on March 28, 2008. Deficiencies were found under 10 NYCRR, 415.12 Quality of Care and 415.12(h)(1)(2) Quality of Care: Accidents.

A review of Ferncliff Nursing Home for the period identified above reveals the following:

- The facility was fined $20,000 pursuant to a Stipulation and Order issued February 27, 2013 for surveillance findings on April 27, 2011. Deficiencies were found under 10 NYCRR, 415.11(c)(3)(i) Services Meets Professional Standards, 415.12 Quality of Care Highest Practicable Potential, 415.15(b)(2)(ii) Physician Visits Review Notes/Care/Orders, 415.18(c)(2) Drug Regimen Review-Report Irregular-Act On, 415.15(a) Medical Director and 415.26 Administration.

A review of Loretto Health and Rehabilitation Center for the Period Identified above reveals the following:

- The facility was fined $2,000 pursuant to a Stipulation and Order issued April 3, 2007 for surveillance findings on July 7, 2006. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents and 415.12(m)(2) Quality of Care: Medication Errors.

A review of operations for Isabella Geriatric Center, Village Care Rehabilitation and Nursing Center, Mary Manning Walsh Nursing Home, St Vicente Depaul Skilled Nursing and Rehabilitation Center, Carmel Richmond Healthcare and Rehabilitation Center, Highland Rehabilitation & Nursing Center and Nottingham RHCF 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 Terence Cardinal Cooke Health Care Center, Ferncliff Nursing Home, Kateri Residence, and Loretto Health and Rehabilitation Center for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for St. Joseph's Hospital for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Bernadine Apartments Assisted Living Program (ALP) for the period identified above reveals the following:

- The facility was fined $1,000 pursuant to a Stipulation and Order for surveillance findings, on August 6, 2013, for violations in resident protections and resident services.

A review of operations for Sedgewick Heights Assisted Living Program (ALP) for the period identified above reveals the following:

- The facility was fined $1,000 pursuant to a Stipulation and Order for surveillance findings, on February 5, 2010, for violations in resident services.

A review of operations for Loretto Nottingham (EHP) for the period identified above reveals the following:

- The facility was fined $22,650 pursuant to a Stipulation and Order for surveillance findings on January 1, 2012 and July 11 with violations found under 18 NYCRR Part 488.

A review of operations for Buckley Landing EHP, Heritage Apartments ALP, Loretto Geriatric Center DTC, and Loretto Geriatric Center LHCSA results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Bernadine Apartments ALP, Sedgewick Heights ALP, and Loretto Nottingham EHP results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

Program Review

Mercy Health and Rehab Center NH, Inc. (Mercy) is the voluntary operator of a 237 bed nursing home located in Auburn, New York. In 2012 Mercy was awarded a HEAL 21 grant for a project which includes the following components:

- Establishment of Auburn Senior Services, Inc. as the new operator of Mercy Health and Rehab Center, with Loretto Management Corporation as the sole corporate member and co-operator;
- The acquisition and closure of the Cayuga County Nursing Home;
- The renovation of the existing Mercy Health and Rehab Center including the installation of a sprinkler system and related asbestos remediation;
- The construction of a 60-bed addition to the Mercy building to enable the relocation of residents from the Cayuga County Nursing Home building.

The subject application is directly related to two other related projects: CON #132079, the establishment of Auburn Senior Services, Inc. as the operator of the existing 80-bed Cayuga County Nursing Home and; CON #132038, the renovation of the lower three floors of the Mercy building. The applicant has already received approval for project CON #132038 and expects to commence construction shortly to ensure compliance with the HEAL financing deadlines.

Upon completion of the project the Cayuga County Nursing Home will close, with the Mercy campus expanded to 300 beds. The applicant has indicated its intention to assume the Cayuga County Nursing Home Medicare provider agreement, and operate both campuses under a single Medicare provider number. In light of staff concerns regarding CMS approval for a single provider number, the applicant has prepared an alternative proposal with the applicant operating both nursing homes in place under their existing Medicare provider agreements. Upon completion of construction, the Mercy provider agreement will be terminated, and the Cayuga County provider agreement will be relocated to the Mercy site and modified to cover a 300 bed nursing home.

Physical Environment

Mercy Health and Rehab Center NH, Inc. was constructed in 1972 and the building is in need of significant renovation to bring it up to Code. Mercy is not in compliance with the August 13, 2013 CMS directive mandating nursing homes be fully sprinklered, and the structure requires comprehensive asbestos remediation prior to the sprinkler installation. The existing Mercy building consists of 150,995 square feet of space in eight floors, with two additional basement levels. Nursing units are located on the second though seventh floors, with the eighth floor functioning as a mechanical penthouse. Floors 2 through 4 are configured as 39 bed nursing units, and floors five through eight are 40-bed units. The 237 bed complement is allocated into 162 beds in double bedrooms, and 75 beds in singles. An adult day health care program is operated in space located on the ground floor.

The latest construction plan calls for the building renovation to start at the bottom floor and move up floor by floor until ending at the eighth. The first three floors have already been approved in an earlier

administrative review project (CON #132038). The revised bed configuration will allocate 40 beds on each of the six floors of residential space, totaling 240 beds in the existing building. The three additional beds will be accommodated by returning three over-sized single bedrooms to their previous alignment as doubles. Dining and activity space will be generally upgraded and the nursing stations will be updated. The floors will receive cosmetic upgrades and the HVAC system and all exterior windows throughout the building will be replaced. The entire structure will be renovated as required to meet all Codes, including the aging mechanical and electrical systems. Asbestos fire-proofing will be fully abated and all areas will receive complete sprinkler coverage.

Concurrent with the renovation project the applicant will undertake the construction of a sixty bed, two story addition which will enable the full relocation of beds from the Cayuga County building. The new wing will add 36,820 square feet in a "J" shape, connecting to the existing building near the new therapy suite. The majority of the resident rooms will be single bedrooms with the upper floor containing 6 doubles and 28 singles, and the lower floor containing 2 doubles and 16 singles. The double bedrooms employ partitions separating the beds located on the outside walls. All of the bathrooms will include 3' by 5' showers. The floors will be configured as 20-bed neighborhoods, each with a separate library/computer area, activity space and on-floor dining area. Each floor will also feature a large central bathing area which includes a stretcher shower and tub room.

The complexity of the overall construction project, coupled with the purchase of the County nursing home building requires preparation of a significant phasing and task schedule to link the elements of the project. The applicant estimates a 15 month timetable commencing January 1, 2014. As noted previously, construction on the Phase I renovations to the bottom three floors is underway, and will need to conclude prior to the commencement of the Phase 2 renovation and expansion project. The applicant has engaged in a discussion with program staff regarding the substantial effort which will be necessary to maintain the project schedule.

Analysis

The renovation and expansion of Mercy will result in a significantly improved residential environment. The existing floors will receive upgrades, and the critical issues regarding the infrastructure and safety items will be addressed. The 60-bed wing will result in the replacement of the obsolete County nursing home building, and will provide County residents access to modern rehabilitation services. While the renovated nursing units are somewhat inferior to the new units, the applicant has improved the living areas as much as possible within the constraints of the existing building. The applicant is encouraged to develop a "Country Kitchen" type of dining service as part of the renovation project.

The applicant will face challenges in phasing the project to integrate the renovation and new construction components. The anticipated January 1, 2014 start date for the new wing may prove unattainable in light of weather constraints and the timing of financing. The applicant has shown an understanding of these issues and has developed alternatives to ensure the project will proceed to completion.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Transfer Agreement

The applicant has submitted an executed transfer agreement for the acquisition of the nursing home, summarized below:

Date:	August 7, 2013
Grantor:	Mercy Health & Rehab Center Nursing Home, Inc.
Grantee:	Auburn Senior Services, Inc. and Loretto Management Corporation, Inc.
Assets Transferred:	Grantor hereby agrees to transfer and convey to Grantee, all of its right, title and interest in the operation of the 237-bed residential health care facility and the real estate associated with the nursing home
Liabilities Assumed:	Grantor shall assume Grantor's Medicaid and Medicare provider agreements and as such, will be responsible for any Medicaid and/or Medicare liabilities, both known or unknown.
Consideration:	$0

The applicant submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to he 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.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement:

Date:	February 8, 2013
Facility:	Auburn Senior Services, Inc.
Contractor:	Loretto Management Corporation (LMC)
Term:	The term of this agreement shall remain in effect until terminated.
Services Provided:	LMC shall provide the following services: provide strategic planning and guidance for the nursing home; identify and implement initiatives designed to generate cost savings; advise the nursing home regarding the nursing home's protocols and wage scales; advise regarding the ongoing evaluation of all quality control aspects; advise regarding the delivery and payment of all food services at the nursing home; advise regarding the administration of a program of regular maintenance and repairs of the nursing home; LMC will provide oversight and management of the design and construction for the building renovations of the nursing home; advise relative to the overall charge structure for the nursing home; advise regarding the timely issuance of bills for services provided by the nursing home; advise in regard to the nursing home's accounting procedures and controls and the implementation of all budgets approved by the nursing home.
Fee:	$720,000 annually.

Total Project Cost and Financing

Total project cost, which is for new construction and renovations, is estimated at $22,361,440, further itemized as follows:

New Construction	$7,732,200
Renovation and Demolition	7,820,400
Site Development	460,000
Design Contingency	901,117
Construction Contingency	901,117
Planning Consultant Fees	100,000
Architect/Engineering Fees	375,000
Other Fees (Consultant)	300,000
Moveable Equipment	2,147,302
Financing Costs	981,572
Interim Interest Expense	518,428
CON Fee	2,000
Additional Processing Fee	122,304
Total Project Cost	$22,361,440

Project costs are based on a January 1, 2014 construction start date and a 15 month construction period.

The applicant will finance $22,361,440 at an interest rate of 5% for a 30 year term via a FHA 232 GNMA-insured mortgage. Equity will include approximately $15 million in HEAL 21 grant funds awarded to the applicant to undertake initial renovations supportive of the larger renovation project proposed in this application (this related HEAL project was approved under administrative review CON #132308). Since the applicant is providing sufficient equity through CON #132038, the applicant may finance 100% of the total project cost of this project. With the inclusion of this project (CON #132093) and CON #132038, the applicant will provide equity of approximately 40% for the combined total project costs.

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the first and third years after the change in operator and the completion of the construction; summarized below:

	Year One	Year Three
Revenues:		
Medicaid Managed Care (SNF)	$15,036,055	$15,546,683
Medicare Fee-for-Service (SNF)	4,330,729	4,417,776
Private Pay (SNF)	5,598,055	6,084,146
Adult Day Care	987,714	1,199,367
Other Revenues	802,760	930,193
Total Revenues	$26,755,313	$28,178,165
Expenses:		
Operating	$23,294,654	$24,396,507
Capital	3,049,047	3,423,045
Total Expenses	$26,343,701	$27,819,552
Excess of Revenues over Expenses	$411,612	$358,613
Utilization:		
SNF (patient days)	103,278	103,278
Adult Day Care (visits)	10,920	13,260
Occupancy (SNF)	94.31%	94.31%

Utilization for the RHCF beds itemized by payor source during the first and third years after the change in operator and the completion of the renovations, summarized as follows:

	Year One and Three
Medicaid Managed Care	73%
Medicare Fee-for-Service	12%
Private Pay	15%

The applicant has indicated that RHCF Medicaid utilization is slightly decreasing while Private Pay and Medicare utilization is slightly increasing because once the renovations are completed, the facility will be the most modern in the county. The facility is also changing rehabilitation service providers this fall. ADHCP utilization will be 100% Medicaid.

The following are the expense reductions during the first year after the change in operator and the completion of the construction:

- Salaries and Wages expenses are decreasing by $584,672 because finance, IT and HR functions will be provided per a purchase agreement with Loretto Management Corporation.
- Employee Benefits expenses are decreasing by $1,541,078 because finance, IT and HR functions will be provided per a purchase agreement with Loretto Management Corporation and union employees will be under the 1199 union agreement, not the county union agreement.
- Professional Fee expenses are decreasing by $214,989 because of renegotiated contracts and the use of Loretto's network (lower) rates from vendors.
- Medical Supplies expenses are decreasing by $92,959 because of renegotiated contracts and the use of Loretto's network (lower) rates from vendors.

Capability and Feasibility

There is no purchase price associated with this application. The total project cost of $22,361,440 will be met via a FHA 232 GNMA-insured mortgage at an interest rate of 5% for a 30 year term.

Working capital requirements are estimated at $4,636,592, which is equivalent to two months of third year expenses. The applicant will receive an equity contribution of $2,636,592 from Loretto Management Corporation, Inc. BFA Attachment C is the 2012 internal financial statements of Loretto Management Corporation, Inc., which indicates the availability of sufficient funds for the equity contribution. The remainder, $2,000,000, will be in the form of a loan from St. Joseph's Hospital Health Center at an interest rate of 5% for a one year term. BFA Attachment D is the 2011 and 2012 certified financial statements of St. Joseph's Hospital Health Center, which indicates the availability of sufficient funds for the loan proceeds.

BFA Attachment E is the pro-forma balance sheet of Auburn Senior Services, Inc. as of the first day of operation, which indicates a positive net asset position of $14,782,302. BFA Attachment G is the cash flow statement of Auburn Senior Services, Inc. for the first year of operation. As shown on Attachment G, the applicant's budget indicates they can pay off the $2,000,000 loan from St. Joseph's Hospital and achieve an end of Year One positive cash flow.

The submitted budget indicates an excess of revenues over expenses of $411,612 and $358,613 during the first and third years after the change in operator and the completion of the renovations. The submitted budget appears reasonable. The applicant has indicated an expected increase in occupancy of approximately 4%. With a newly renovated facility under new ownership the applicant anticipates Cayuga County residents will, to greater extent, remain in the county rather than seeking skilled nursing care in the neighboring cities of Syracuse or Rochester. Also the new facility will have a state of the art rehabilitation facility, which will attract more short-term stays.

BFA Attachment A is the financial summary of Mercy Health and Rehabilitation Center from 2010 through 2012. As shown, the facility had an average negative working capital position and an average negative net asset position from 2010 through 2012. The facility incurred average losses of $1,140,828 from 2010 through 2012. The applicant has indicated that the primary reason for the losses was the result of low occupancy. The applicant has implemented the following steps to improve operations: renegotiating better terms or changing vendors for Mercy in the areas of rehabilitation services, nursing supplies,

pharmacy and others; implementing new financial system and electronic medical records system, which will help reduce the days in accounts receivable by streamlining the billing function and helping the nursing department document resident care to help improve the case mix. Also, the facility was not taking advantage of available reimbursement for certified nursing aide training or for certain food grants available through New York State; day to day staffing on the floors is now more closely monitored while remaining in compliance with the union agreement, and they have obtained managed care contracts to increase potential admissions. The applicant has indicated that once the merger takes place, they anticipate the following opportunities: Once the 300-bed facility is established, the facility will benefit from a higher Medicaid rate from being a 300-bed facility; union employees in the merged company will be under the 1199 union agreement and not under the Cayuga County union agreement; and the renovated facility will be the newest in the County and will be attractive to potential residents.

BFA Attachment B is the financial summary of Cayuga County Nursing Home from 2010 through 2012. As shown, the facility had an average positive working capital position and an average positive net asset position from 2010 through 2012. Also, the facility incurred an average loss from operations of $440,516 from 2010 through 2012. The applicant has indicated that the reason for the losses are a result of the following: Medicaid and Medicare rate reductions which resulted in a Medicaid rate lower than the average operating expense per day and operating expenses increased due to an increase in retirement and healthcare costs. This project, with CON #132079 and CON #132068 will fulfill the objectives of the HEAL 21 Grant.

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- Mercy Health and Rehabilitation Center
BFA Attachment B	Financial Summary- Cayuga County Nursing Home
BFA Attachment C	Financial Summary- Loretto Management Corporation, Inc.
BFA Attachment D	Financial Summary- St. Joseph's Hospital Health Center
BFA Attachment E	Pro-forma Balance Sheet as of the first day of operation.
BFA Attachment F	Organizational Chart of Loretto
BFA Attachment G	Cash Flow Statement for year one

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

September 12, 2013

Certified Home Health Agencies – Establish/Construct **Exhibit # 10**

	Number	Applicant/Facility
1.	131281 E	L. Woerner, Inc. d/b/a HCR (Washington County)

Public Health and Health Planning Council

Project #131281-E

L. Woerner, Inc. d/b/a HCR

County: **Washington County**
Purpose: **Establishment**

Program: **Certified Home Health Agency**
Submitted: **May 20, 2013**

Executive Summary

Description

L. Woerner, Inc. d/b/a HCR, a proprietary corporation that currently operates Article 36 certified home health agencies (CHHAs), long term home health cae programs (LTHHCPs), and licensed home care services agencies (LHCSA), requests approval to purchase and become the operator of the Washington County Public Health Nursing Service's Article 36 CHHA and LTHHCP pursuant to an Asset Purchase Agreement entered into by HCR and the County on December 3, 2013.

DOH Recommendation

Contingent Approval

Program Summary

As is the case with other HCR agencies, the proposed HCR in Hudson Falls CHHA and LTHHCP will be an additional separate and distinct agency from its existing agencies.

HCR in Hudson Falls CHHA will continue to provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional, Occupational Therapy, Personal Care, Physical Therapy, and Speech Language Pathology to the residents of Washington County, and will also provide the additional new service of Respiratory Therapy to the residents of Washington County.

HCR in Hudson Falls LTHHCP will continue to provide the thirteen required services of Audiology, Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Medical Supplies/Equipment/ Appliances, Nursing, Nutritional, Occupational Therapy, Personal Care, Physical Therapy, Respiratory Therapy, and Speech Language Pathology to the residents of Washington County. However, it will no longer provide the optional service of AIDS Home Care Program to the residents of Washington County. The LTHHCP will have a maximum patient capacity of 60.

L. Woerner, Inc., d/b/a HCR, and its principals, all possess the appropriate character and competence for approval of this application.

Financial Summary

The purchase price for the operation will be $550,000. The purchase price will be met via equity from the shareholders of L. Woerner, Inc.

Budget:

Revenues	$3,959,039
Expenses	3,827,878
Net Income	$ 131,161

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.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this application.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed lease, acceptable to the Department of Health. (BFA)

Approval conditional upon:

1. The project must be completed within one year from the date 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 application by the applicant and an expiration of the approval. [PMU]
2. Approval conditioned upon proper notice being given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. Approval conditioned upon no employee, or any other individual, owning/controlling 10% or more of the stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as appropriate. [CHA]

Council Action Date

October 3, 2013.

Programmatic Analysis

Review Summary

L. Woerner, Inc., d/b/a HCR, currently operates six Article 36 CHHAs and four Article 36 LTHHCPs in New York State as follows:
HCR in Cobleskill – CHHA serving Schoharie County
HCR in Delhi – CHHA and LTHHCP serving Delaware County
HCR in Homer – CHHA serving Cortland County
HCR in Plattsburgh – CHHA and LTHHCP serving Clinton County
HCR in Rochester (with an additional branch office practice location in Batavia) – CHHA serving Monroe, Genesee and Orleans Counties, and LTHHCP serving Genesee County
HCR in Wampsville – CHHA and LTHHCP serving Madison County

L. Woerner, Inc., d/b/a HCR also currently operates two Article 36 LHCSAs in New York State as follows:
HCR in Rochester – serving Livingston, Monroe, Ontario, Orleans, and Wayne Counties
HCR in Batavia – serving Genesee, Monroe, Orleans, and Wyoming Counties

The current proposal seeks approval for L. Woerner, Inc., d/b/a HCR, to purchase and become the new owner/operator of the CHHA and LTHHCP currently operated by Washington County Public Health Nursing Service in Hudson Falls. HCR plans to continue to operate this CHHA and LTHHCP in Hudson Falls, and continue to serve Washington County. As is the case with all its other agencies listed above, the proposed HCR in Hudson Falls CHHA and LTHHCP will be an additional separate and distinct agency from its existing agencies identified above. Upon sale of this CHHA and LTHHCP to L. Woerner, Inc., d/b/a HCR, the Washington County Public Health Nursing Service CHHA and LTHHCP will officially close.

HCR in Hudson Falls CHHA will continue to provide the services of Home Health Aide, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional, Occupational Therapy, Personal Care, Physical Therapy, and Speech Language Pathology to the residents of Washington County, and will also provide the additional new service of Respiratory Therapy to the residents of Washington County.

HCR in Hudson Falls LTHHCP will continue to provide the thirteen required services of Audiology, Home Health Aide, Homemaker, Housekeeper, Medical Social Services, Medical Supplies/Equipment/Appliances, Nursing, Nutritional, Occupational Therapy, Personal Care, Physical Therapy, Respiratory Therapy, and Speech Language Pathology to the residents of Washington County. However, it will no longer provide the optional service of AIDS Home Care Program to the residents of Washington County. The LTHHCP will have a maximum patient capacity of 60.

In 2006 (CON 061088), L. Woerner, Inc, d/b/a HCR received Public Health Council approval to convert 90% of the shares of corporate stock (which up to that time where owned 90.5% by Louise Woerner and 9.5% by Mark Maxim - both disclosed below), to an Employee Stock Ownership Plan (ESOP), and establish a trust to control and manage the assets, including the stock, held by the ESOP. Ms. Woerner retained 7% of the shares, and Mr. Maxim retained 3% of the shares.

Each employee participating in the ESOP does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Ms. Woerner and Mr. Maxim are named the sole voting trustees of the ESOP trust, with the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the trustees in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction. Additional trustees may be designated in the future, but they will not have any voting rights. The Certificate of Amendment to the Certificate of Incorporation stated that the corporation's stock shall be held only by employees of L. Woerner, Inc.,

d/b/a HCR, or any of its wholly owned subsidiaries, or by the ESOP trust. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no employee controls 10% or more of the stock, or will control 10% or more of the stock without first obtaining Department of Health and/or Public Health Council approval, as appropriate.

CON project 061088 also noted that L. Woerner, Inc., d/b/a HCR, operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc., d/b/a HCR wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

The corporation is currently authorized 2,000,000 shares of stock. The stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,800,000 shares (90%)
Louise Woerner – 140,000 shares (7%)
Mark Maxim – 60,000 shares (3%)

The Trustees of the Employee Stock Ownership Plan Trust are as follows:

Louise Woerner
Executive Board Chairperson, L. Woerner, Inc., d/b/a HCR (CHHA, LTHHCP, and LHCSA)

Affiliations:
- HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08

Mark Maxim, CPA
Chief Executive Officer / Administrator, L. Woerner, Inc., d/b/a HCR (CHHA, LTHHCP, and LHCSA)

Affiliations:
- Lakeside Memorial Hospital, Inc., Brockport (Hospital) - 5/3/06 to present

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR, are as follows:

Louise Woerner, Chairperson, Secretary
Disclosed above

Don H. Kollmorgen
Retired

Mark Maxim, CPA, President
Disclosed above

Carolyn A. Maxim, LMSW
Owner, Carolyn A. Maxim, LMSW (Counseling Services)
Social Worker, Geriatric Case Manager, L. Woerner, Inc., d/b/a HCR

The Office of the Professions of the State Education Department indicates no issues with the CPA licensure of Mark Maxim or with the LMSW license of Carolyn Maxim. In addition, a search of all of the above named trustees, board members, officers, employers, and health care affiliations revealed no matches on either the Medicaid Disqualified Provider List or the Office of the Inspector General's Provider Exclusion List.

The Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR, for the time period 2003 to present, and the

LTHHCPs operated by L. Woerner, Inc., d/b/a HCR, for the time period May 2010 (establishment of the first HCR LTHHCP) to present. It has been determined that the CHHAs, LTHHCPs, and LHCSAs have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. The CHHAs, LTHHCPs, and LHCSAs have been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The Division of Hospitals and Diagnostic & Treatment Centers reviewed the compliance history of Lakeside Memorial Hospital, Inc., for the time period May 3, 2006 to present. It has been determined that the affiliated hospital has been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that the affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

A review of the personal qualifying information indicates there is nothing in the background of the principal stockholders, trustees, board members, and officers to adversely effect their positions with L. Woerner, Inc., d/b/a HCR. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for acquiring the CHHA and the LTHHCP operation, summarized below:

Date:	December 3, 2012
Purchaser:	L. Woerner d/b/a HCR
Seller:	County of Washington
Purchased Assets:	The purchaser will purchase the following assets: Seller's right to operate the CHHA in Washington County subject to approval by NYSDOH through a change in ownership approval; Seller's right to operate the LTHHCP subject to approval by NYSDOH; copies of all current patient lists and patient files, with pending orders, treatment plans and clinical records; any and all of Seller's rights under the Assumed Provider Agreements; and any all of Seller's rights under the Assumed Operating Contracts' all equipment, medical supplies and inventory used solely by Seller in the operation of the Agency and all equipment, medical supplies and inventory used solely by Seller in the operation of the Agency.
Excluded Assets:	Cash on hand or in accounts; including certificates of deposit, bank deposits, savings accounts; amounts due or become due to Seller with respect to services provided prior to the Closing Date; municipal documents of the Seller required to be maintained by the County; all non-transferable or non-assignable permits or licenses used in the connection with the agency; all federal, state, local or foreign tax benefits and refunds due to Seller; insurance policies and any prepaid insurance premiums; all contract agreements, licenses, leases and commitments that the Buyer does not assume; all security deposits and prepayments paid by the Seller; letters of

	credit or deposits provided to utility companies; any refunds or credits, claims for refunds or credits paid by the Seller prior to the Closing; all employee benefit plans and related plan assets; all accounts, notes, interest and other receivables of Seller; all inter-agency or intra-agency receivables by and among Seller; any assets relating to or used in connection with Seller's Public Health agencies and any records which by law Seller is required to retain in its possession.
Assumed Liabilities:	None
Excluded Liabilities:	All accounts payable of Seller; any amounts due, claimed or becoming due to Medicare, Medicaid or any other third party payor; any liability or obligation of Seller arising under or with respect to any of the Assumed Provider Agreements; any obligations or liabilities with respect to any employee wages; any liability or obligation of Seller arising from or in connection with any of the Excluded Assets; any and all contracts and collective bargaining agreements; and any and all claims, causes of action, liabilities, obligations, indebtedness, fines, interest and the penalties of Seller prior to the Closing Date.
Purchase Price:	$550,000
Payment of Purchase Price:	Deposit of $50,000 upon the Closing Date; Purchaser on the first anniversary of the Closing Date, Purchaser shall pay the Seller $60,000; and on the Second, third, fourth and fifth anniversary of the Closing, Purchaser shall pay $110,000 each year.

The applicant has submitted an affidavit from the applicant, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding liabilities.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy:

Premises:	1,790 sq. ft. on the second floor in the building known as Bank Commons
Lessor:	HF Park Properties, LLC
Lessee:	L. Woerner, Inc. d/b/a HCR
Term:	5 years
Rental:	$26,760.50 annual rent ($14.95 per sq. ft.)
Provisions:	The lessee shall be responsible for utilities, maintenance and real estate taxes.

Operating Budget

The applicant has submitted an incremental operating budget, in 2013 dollars, during the first year after the change in operator; summarized below:

Revenues:	
Medicaid Managed Care	$ 450,733
Medicare Fee-for-Service	2,334,065
Commercial Fee-for-Service	1,156,591
Private Pay	17,650
Total Revenues	$3,959,039
Total Expenses	3,827,878
Net Income	$ 131,161

Utilization broken down by payor source during the first year is as follows:

Medicaid Managed Care	12.49%
Medicare Fee-for-Service	56.39%
Commercial Fee-for-Service	28.17%
Private Pay	2.95%

Expense and utilization assumptions are based on the historical experience of the applicant's existing operation. Revenues are reflective of current payment rates, as well as the recent implementation of the Medicaid Episodic Payment System.

Capability and Feasibility

The purchase price of $550,000 will be met via equity from the shareholders of L. Woerner, Inc.

Working capital requirements are estimated at $637,979, which is equivalent to two months of first year expenses. The applicant has indicated that the working capital requirement will be met via equity from the shareholders of L. Woerner, Inc. BFA Attachment A is the personal net worth statements of the shareholders of L. Woerner, Inc., which indicates the availability of sufficient funds for the working capital requirement.

The submitted budget indicates an incremental net income of $131,161 during the first year. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. The budget appears reasonable. The applicant has provided financial data relative to Washington County Public Health Service's CHHA from 2011 through 2012. The facility incurred average losses of $614,955 from 2011 through 2012. The reason for the losses are the result of the following: a significant decrease in caseloads; patients switching to managed care products which resulted in less reimbursement; co-pays became a barrier for patients to accept services, and State Aid reimbursement cuts in 2011.

BFA Attachment B are the 2010 and 2011 certified financial statements of L. Woerner, Inc. and show the facility had an average positive working capital position and an average negative shareholders position during 2010 and 2011. Also, the facility incurred average operating losses of $3,336,003 from 2010 and 2011. The applicant has indicated the reason for the 2010 loss was their contribution of $4,000,000 ESOP contribution. The applicant has indicated the reasons for the 2011 loss was the following: ESOP contributions of $1,000,000; the Company incurred $2M of non recurring expenses in an effort to position the Company as a preferred provider of comprehensive patient centered across the state and delays in receiving reimbursement from Medicaid and Medicare from its new acquired agencies.

BFA Attachment C is the December 31, 2012 internal financial statements of L. Woerner, Inc. As shown, the Company had a negative working capital position and a negative shareholders position in 2012. Also, the Company incurred a net loss of $2,721,044 in 2012. The applicant has indicated the reason for the losses are as follows: ESOP contribution of $1,000,000; expenses incurred due to facility integrating the newly acquired agencies; and delays in receiving reimbursement from its two largest payors, Medicaid and Medicare as the enrollment process took an average of nine months to complete for each of the newly acquired agencies. The applicant implemented the following steps to improve operations: the newly acquired agencies have largely been integrated and the Company is proposing to expand its effort into 13 additional Counties; improved Medicare case mix; increased volumes; and reduced costs through efficiencies through new technology (software).

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A-	Personal Net Worth Statements
BFA Attachment B-	Financial Summary- 2010 and 2011 certified financial statements of L. Woerner, Inc.
BFA Attachment C-	Financial Summary- 2012 internal financial statements of L. Woerner, Inc.

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

September 12, 2013

Certificates

Certificate of Incorporation **Exhibit # 11**

Applicant

1. The Hazel Thomas Holder Lung Foundation, Inc.

Certificate of Amendment of the Certificate of Incorporation **Exhibit # 12**

Applicant

1. The Foundation of St. Mary's Hospital at Amsterdam, Inc.

Certificate of Dissolution **Exhibit # 13**

Applicant

1. The Linden Foundation, Inc.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Lisa Thomson
Division of Health Facility Planning

Colleen Frost, Executive Secretary
Public Health Council

FROM: James Dering, General Counsel
Division of Legal Affairs

DATE: August 30, 2013

SUBJECT: Proposed Restated Certificate of Incorporation of The Hazel Thomas Holder Lung Foundation, Inc.

The attached proposed Certificate of Incorporation of The Hazel Thomas Holder Lung Foundation, Inc. ("the Foundation"), dated April 26, 2013 is being submitted for Public Health Council approval. The Foundation's purpose is to solicit funds for the benefit of NYU Langone Medical Center which operate facilities licensed pursuant to Article 28 of the Public Health Law. The Foundation's ability to file the certificate and solicit funds for such purpose depends on the approval of the Public Health Council pursuant to Public Health Law 2801-a(1) and (6).

In addition to the proposed Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval.

1) A letter, dated March 29, 2013 from the Foundation's attorney providing additional information about the Foundation, including a description of the Foundation's fund raising activities.

2) The Foundation's bylaws.

3) A letter from the intended beneficiaries acknowledging and approving of the Foundation's proposed fund raising activities on their behalf.

4) Disclosure information regarding the Foundation's board of directors in the letter dated March 29, 2013 from the Foundation's attorney.

The proposed Certificate of Incorporation is in legally acceptable form.

Attachments

The Hazel Thomas Holder Lung Foundation, Inc.

March 29, 2013

Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower
Rm 2484
Empire State Plaza
Albany, New York 12237

Re: Request for a letter of Consent to permit filing with the Secretary of State
The Hazel Thomas Holder Lung Foundation, Inc.

Dear Sir/Madam,

Enclosed please find the following:

1. A photocopy of the signed and dated proposed Certificate;
2. The By-Laws for the Corporation;
3. The original of a signed and dated letter from NYU Langone Medical Center acknowledging that it will accept funds for it raised by the Corporation;
4. A generalized description of the fundraising activities to be undertaken by the Corporation include:
   a. Annual Formal Fundraising Dinner – annual formal dinner that reports the organization's progress, honors Hazel Thomas Holder, announces the organization's future goals and a guest speaker (lung disease related speech).
   b. Social Media Campaigns – raise money by creating social media campaigns that solicit donations for the NYU Langone Medical Center.
   c. Online Auction – auction items purchased by the non-profit.
   d. Marathons, walkathons, bowlathons and triathlons – participants pay a fee and solicit donations to participate in the activity.

5. The Corporation's initial Board of Directors:

   Kamilah Holder
   244 5th Ave, Suite 2022
   New York, NY 10001

   Occupation: Attorney
   Quinn Emanuel Urquhart & Sullivan, LLP

865 S. Figueroa Street
Los Angeles, CA 90017

No past or present affiliations with other charitable or non-profit organizations

Carrie Anne Powell
302A W 12th Street, #238
New York, NY 10014

Occupation: Assistant Coordinator
Single Stop Program
Mid Manhattan Library
455 5th Avenue
New York, NY 10016

Non Profit Affiliations (all in connection with her employment):

1. Single Stop Program - 03/2011 to 04/2012 & 09/2012 to present
2. Seedco - 03/2011 to 04/2012
3. Community Healthcare Network - 12/2009 to 03/2010
4. Pension Boards United Church of Christ - 04/2010 to 12/2010

Sasha O'Connor
817 Pleasant Road
Yeadon, PA 19050

Occupation: Customer Service Agent
US Airways Express
Peidmont Airlines
8500 Essington Avenue
Philadelphia, PA 19153

No past or present affiliations with other charitable or non-profit organizations

Omar Holder
1250 East 95th Street
Brooklyn, NY 11236

Occupation: Bus Maintainer
MTA New York City Transit
1720 Bushwick Avenue
Brooklyn, NY 11207

No past or present affiliations with other charitable or non-profit organizations

6. Identification of the organizational relationship between the corporation and the licensed supported organization:

The Hazel Thomas Holder Lung Foundation, Inc. is an organization established in 2013 to honor the cherished, Hazel Thomas Holder, who passed away on March 23, 2012 from Bronchiolitis Obliterans with Organizing Pneumonia ("BOOP") and to promote and advance research relating to BOOP and other lung diseases.

Roughly two years ago, Hazel Thomas Holder was diagnosed with BOOP. At the time of her diagnosis, there was not much available about causes of BOOP or treatments. After struggling with the disease and the harsh effects of treatment, Hazel passed away on March 23, 2012. A few days before she passed away, we were told to contact Dr. David Kamelhar and Dr. Eric Teller at NYU Langone Medical Center. I was pleased to see that Dr. Kamelhar and Dr. Teller had experience with BOOP. We immediately felt like there was a possibility for her recovery. However, it was too late for Hazel. The Hazel Thomas Holder Lung Foundation, Inc. would like to increase awareness regarding the causes, treatment and prevention of BOOP and other lung diseases. As the NYU Langone Medical Center is familiar with BOOP and other ling diseases, we thought they would be a great fit.

7. There are no entities which control, or are controlled by, The Hazel Thomas Holder Lung Foundation, Inc.

Should you have any questions or concerns, I can be reached at the following address and phone number:

Kamilah Holder
The Hazel Thomas Holder Lung Foundation, Inc.
244 5th Ave, Suite 2022
New York, New York 10001
(917)426-2659

Best,

Kamilah Holder

CERTIFICATE OF INCORPORATION OF:

The Hazel Thomas Holder Lung Foundation, Inc.

Under Section 402 of the Not-for-Profit Corporation Law

FIRST:

The name of the corporation is: The Hazel Thomas Holder Lung Foundation, Inc.

SECOND:

The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law.

THIRD:

The corporation is organized for the charitable purpose of aiding the NYU Langone Medical Center, Division of Pulmonary, Critical Care & Sleep Medicine in New York State in advancing research relating to Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases and providing resources to those suffering from such diseases by:

a) Facilitating lectures, seminars and presentations provided by medical professionals regarding Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases to provide a better understanding of the origin, severity and how to prevent such diseases;

b) Organizing fundraisers, the proceeds of which will be donated to the NYU Langone Medical Center, Division of Pulmonary, Critical Care & Sleep Medicine to further medical research regarding the causes and treatment of Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases;

c) Providing referrals to medical institutions that provide care and support to those suffering from Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases; and

d) Providing information regarding counseling services to family and friends of those suffering from Bronchiolitis Obliterans Organizing Pneumonia and other lung related diseases.

e) Nothing in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (2) establish operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate

an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law (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 in this Certificate of Incorporation shall authorize the corporation within the State of New York, to (a) hold itself out as providing or (b) provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law, or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physical therapy, or radiation technology.

f) Nothing herein shall authorize the corporation to operate, maintain or manage a charter school, a nursery school, an elementary school, a secondary school, a college, university or to advertise or offer credit-bearing courses or degrees in New York State;

g) Except as authorized by Title VIII or other applicable statute, nothing herein shall authorize the corporation to engage in the practice of any profession in New York, engage in the training of any profession in New York or to use a professional title or term of any profession in New York in violation of Title VIII of the Education Law.

h) The corporation will restrict the provision of counseling services to instruction, advice, support, encouragement or information to individuals, families, and relational groups, provided that this shall not include the diagnosis or treatment of mental, emotional, nervous, or behavioral disorders.

FOURTH:

The corporation shall be a Type B corporation pursuant to Section 201 of the Not-for-Profit Corporation Law.

FIFTH:

The office of the corporation is to be located in the County of New York, State of New York.

SIXTH:

The names and addresses of the four directors of the corporation are:

1. Name: Kamilah Holder
   Address: 244 5th Avenue, Suite 2022, New York, New York 10001

2. Name: Sasha O'Connor
   Address: 817 Pleasant Road, Yeadon, Pennsylvania 19050

3. Name: Carrie Anne Powell
   Address: 302A West 12th Street, Suite 238, New York, New York 10014

4. Name: Omar Holder
   Address: 1250 East 95th Street, Brooklyn, New York 11236

SEVENTH:

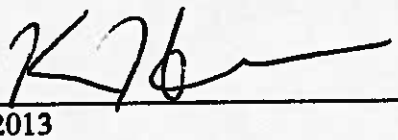
The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall mail a copy of any process accepted on behalf of the corporation is: 244 5th Avenue, Suite 2022, New York, New York 10001.

EIGHTH:

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

Incorporator Name: Kamilah Holder

Address: 244 5th Avenue, Suite 2022, New York, New York 10001

Signature: 

Date: April 26, 2013

CERTIFICATE OF INCORPORATION OF:

The Hazel Thomas Holder Lung Foundation, Inc.

Under Section 402 of the Not-for-Profit Corporation Law

Filed By:

Name: Kamilah Holder

Mailing Address: 244 5th Avenue, Suite 2022, New York, New York 10001

BY-LAWS

of

THE HAZEL THOMAS HOLDER LUNG FOUNDATION, INC.

A New York Not-for-Profit Corporation

ARTICLE I - NONPROFIT PURPOSES

Section 1. Specific Objectives and Purposes. The Hazel Thomas Holder Lung Foundation, Inc. ("the Corporation") was formed to honor the beloved Hazel Thomas Holder who passed away on March 23, 2012 from Bronchiolitis Obliterans with Organizing Pneumonia ("BOOP"). BOOP is a rare lung condition in which the small airways (bronchioles) and the tiny air-exchange sacs (alveoli) become inflamed and plugged with connective tissue. The Corporation is organized for the charitable purpose of advancing research relating to Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases and providing resources to those suffering from such diseases by:

a) Facilitating lectures, seminars and presentations provided by medical professionals regarding Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases to provide a better understanding of the origin, severity and how to prevent such diseases;

b) Organizing fundraisers, the proceeds of which will be donated to the NYU Langone Medical Center, Division of Pulmonary, Critical Care & Sleep Medicine to further medical research regarding the causes and treatment of Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases;

c) Providing referrals to medical institutions that provide care and support to those suffering from Bronchiolitis Obliterans Organizing Pneumonia and other lung diseases; and

d) Providing information regarding counseling services to family and friends of those suffering from Bronchiolitis Obliterans Organizing Pneumonia and other lung related diseases.

Section 2. IRC Section 501(c)(3) and New York State Section 201(b) Purposes.

A. The Hazel Thomas Holder Lung Foundation, Inc. is a Corporation that is organized exclusively for charitable, educational and scientific purposes, including for the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

B. Consistent with the requirements of Section 102(a)(5) of the N-PCL and Section 501(c)(3) of the Code, no part of the net earnings of the Corporation will inure to the benefit of any director, officer, or any private individual, except that the Corporation shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes as set forth in the Corporation's Articles of Incorporation. In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to another organization exempt under Section 501(c)(3) of the Code, or to the Federal government, or state or local government, for a public purpose as the Board of Directors of the Corporation (the "Board") may determine. In no event shall any of such assets or property be distributed to any director, officer, or any private individual.

C. The Corporation may receive property by gift, devise or bequest, invest or reinvest the same, and apply the income and principal thereof, as the Board may from time to time determine, either directly or through contributions to any charitable organization or organizations, exclusively for charitable purposes.

D. In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute its income for said period at such time and in such manner as not to subject it to tax under Section 4942 of the Code, the Corporation shall not (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any investment in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (d) make any taxable expenditures as defined in Section 4945(d) of the Code.

E. Nothing herein shall authorize the Corporation to (1) provide hospital services or health related services, as such terms are defined in the New York State Public Health Law (PHL); (2) establish operate or maintain a hospital, a home care services agency, a hospice, a managed care organization or a health maintenance organization, as provided for by Articles 28, 36, 40 and 44 respectively, of the PHL and implementing regulations; (3) establish and operate an independent practice association, (4) establish, operate, construct, lease, or maintain an adult home, an enriched housing program, a residence for adults, or an assisted living program, as provided for by Article 7 of the New York State Social Services Law (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 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.

F. Nothing herein shall authorize the Corporation to operate, maintain or manage a charter school, a nursery school, an elementary school, a secondary school, a college, university or to advertise or offer credit-bearing courses or degrees in New York State;

G. Except as authorized by Title VIII or other applicable statute, nothing herein shall authorize the Corporation to engage in the practice of any profession in New York, engage in the

training of any profession in New York or to use a professional title or term of any profession in New York in violation of Title VIII of the Education Law.

11. The Corporation will restrict the provision of counseling services to instruction, advice, support, encouragement or information to individuals, families, and relational groups, provided that this shall not include the diagnosis or treatment of mental, emotional, nervous, or behavioral disorders.

ARTICLE II - OFFICE AND BOOKS

Section 1. Office. The principal office of the Corporation is located in New York County, State of New York, at 244 5th Avenue, Suite 2022, New York, New York 10001. The Corporation may also have offices at such other places within or without this state as the Board may from time to time determine or the business of the Corporation may require.

Section 2. Books. There shall be kept at the office of the Corporation or at a place determined by the Board, correct books of account of the activities and transactions of the Corporation including a minute book which shall contain a copy of the Certificate of Incorporation, a copy of these By-Laws, and all minutes of the meetings of the Members and of the Board. These shall be freely accessible to the Board.

ARTICLE III – DIRECTORS

Section 1. Number. The Corporation shall have four (4) initial directors and collectively they shall be known as the Board of Directors.

Section 2. Qualifications. The Board shall be of the age of majority in the state of New York.

Section 3. Powers. Subject to the provisions of the laws of this state and any limitations in the Certificate of Incorporation and these By-Laws relating to action required or permitted to be taken or approved by the Board, if any, of this Corporation, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board.

Section 4. Duties. It shall be the duty of the Board to:

a. Perform any and all duties imposed on them collectively or individually by law, by the Certificate of Incorporation, or by these By-Laws;

b. Appoint and remove, employ and discharge, and, except as otherwise provided in these By-Laws, prescribe the duties and fix the compensation, if any, of all officers, agents, and employees of the Corporation;

c. Supervise all officers, agents, and employees of the Corporation to assure that their duties are performed properly;

d. Meet at such times and places as required by these By-Laws;

e. Register their addresses with the secretary of the Corporation, and notices of meetings mailed or emailed to them at such addresses shall be valid notices thereof.

Section 5. Term of Office. There is no specific term of office.

Section 6. Compensation. The Board shall serve without compensation except that a reasonable fee may be paid to the Board. In addition, the Board shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their duties. Any payments to the Board shall be approved in advance in accordance with this Corporation's conflict of interest policy, as set forth in Article 9 of these By-Laws.

Section 7. Place of Meetings. The Corporation shall hold an annual general meeting once a year at a time and place determined by the Board. During the meeting, members may discuss, in addition to any other business that may be transacted, the report of the Board, the financial statements of the previous fiscal year and the report of the auditors.

Section 8. Regular Meetings. The Regular meetings of the Board shall be held periodically as determined by the Board.

Section 9. Special Meetings. Special meetings of the Board may be called by the chairperson of the Board, the president, the vice president, the secretary, by any two directors, or, if different, by the persons specifically authorized under the laws of this state to call special meetings of the Board. Such meetings shall be held at the principal office of the Corporation or, if different, at the place designated by the person or persons calling the special meeting.

Section 10. Notice of Meetings. Unless otherwise provided by the Certificate of Incorporation, these By-Laws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board of directors:

a. Regular Meetings. No notice need be given of any regular meeting of the Board.

b. Special Meetings. At least one week prior notice shall be given by the secretary of the Corporation to each director of each special meeting of the Board. Such notice may be oral or written, may be given personally, by first class mail, email, by telephone or by facsimile, and shall state the place, date, and time of the meeting and the matters proposed to be acted upon at the meeting. In the case of email or facsimile notification, the director to be contacted shall acknowledge personal receipt of the facsimile notice by a return message or telephone call within twenty-four hours of the first facsimile transmission.

c. Waiver of Notice. Whenever any notice of a meeting is required to be given to any director of this Corporation under provisions of the Certificate of Incorporation, these By-Laws, or the laws of this state, a waiver of notice in writing signed by the director, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

Section 11. Quorum for Meetings. A quorum shall consist of three (3) of the members of the Board. Except as otherwise provided in the Certificate of Incorporation, these By-Laws, or provisions of law, no business shall be considered by the Board at any meeting at which the required quorum is not present, and the only motion which the chair shall entertain at such meeting is a motion to adjourn.

Section 12. Majority Action as Board Action. Every act or decision done or made by a majority of the Board present at a meeting duly held at which a quorum is present is the act of the Board of directors, unless the Certificate of Incorporation, these By-Laws, or provisions of law require a greater percentage or different voting rules for approval of a matter by the Board.

Section 13. Conduct of Meetings. Meetings of the Board shall be presided over by the chairperson of the Board, or, if no such person has been so designated, or in his or her absence, the president of the Corporation, or in his or her absence, by the vice president of the Corporation, or in the absence of each of these persons, by a chairperson chosen by a majority of the Board present at the meeting. The secretary of the Corporation shall act as secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

Section 14. Vacancies. Vacancies on the Board shall exist (1) on the death, resignation, or removal of any director, and (2) whenever the number of authorized directors is increased. Any director may resign effective upon giving written notice to the chairperson of the Board, the president, the secretary, or the Board of directors, unless the notice specifies a later time for the effectiveness of such resignation. No director may resign if the Corporation would then be left without a duly elected director or directors in charge of its affairs, except upon notice to the office of the attorney general or other appropriate agency of this state. Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of this state. Unless otherwise prohibited by the Certificate of Incorporation, these By-Laws, or provisions of law, vacancies on the Board may be filled by approval of the Board. If the number of directors then in office is less than a quorum, a vacancy on the Board may be filled by approval of a majority of the Board then in office or by a sole remaining director. A person elected to fill a vacancy on the Board shall hold office until the next election of the Board of directors or until his or her death, resignation, or removal from office.

Section 15. Non-liability of Directors. The Board shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

Section 16. Indemnification by Corporation of Directors and Officers. The Board and officers of the Corporation shall be indemnified by the Corporation to the fullest extent permissible under the laws of the state of New York.

Section 17. Insurance For Corporate Agents. Except as may be otherwise provided under provisions of law, the Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including a director, officer, employee, or other agent of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the Certificate of Incorporation, these By-Laws, or provisions of law.

ARTICLE IV – OFFICERS

Section 1. Designation of Officers. The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer. The Corporation will also have three members-at-large and other such officers with such titles as may be determined from time to time by the Board.

Section 2. Qualifications. Any person may serve as officer of this Corporation.

Section 3. Election and Term of Office. Officers shall be elected by the Board, at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until a term of three (3) years has passed. Board Member Kamilah Holder shall serve as the President until she resigns.

Section 4. Removal and Resignation. Any officer may be removed, either with or without cause, by the Board, at any time. Any officer may resign at any time by giving written notice to the Board or to the president or secretary of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board relating to the employment of any officer of the Corporation.

Section 5. Vacancies. Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board. In the event of a vacancy in any office other than that of president, such vacancy may be filled temporarily by appointment by the president until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board shall determine.

Section 6. Duties of President. The president shall be the chief executive officer of the Corporation and shall, subject to the control of the Board, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Certificate of Incorporation, or by these By-Laws, or which may be prescribed from time to time by the Board. Unless another person is specifically appointed as chairperson of the Board, the president shall preside at all meetings of the Board and, if this Corporation has members, at all meetings of the members. Except as otherwise expressly provided by law, by the Certificate of Incorporation, or by these

By-Laws, he or she shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board. The president shall also have veto power with respect to all decisions of the Corporation.

Section 7. Duties of 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 all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions on, the president except for the president's veto power. The vice president shall have other powers and perform such other duties as may be prescribed by law, by the Certificate of Incorporation, or by these By-Laws, or as may be prescribed by the board of directors.

Section 8. Duties of Secretary. The secretary shall: Certify and keep at the principal office of the Corporation the original, or a copy, of these By-Laws as amended or otherwise altered to date. Keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all meetings of the Board, and, if applicable, meetings of committees of directors and of members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof. See that all notices are duly given in accordance with the provisions of these By-Laws or as required by law.

Be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these By-Laws, to duly executed documents of the Corporation. Keep at the principal office of the Corporation or at a place designated by the Board a membership book containing the name and address of each and any members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased. Exhibit at all reasonable times to any director of the Corporation, or to his or her agent or attorney, on request therefor, the By-Laws, the membership book, and the minutes of the proceedings of the Board of the Corporation. In general, perform all duties incident to the office of secretary and such other duties as may be required by law, by the Certificate of Incorporation, or by these By-Laws, or which may be assigned to him or her from time to time by the Board.

Section 9. Duties of Treasurer. The treasurer shall: Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board. Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever. Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Board, taking proper vouchers for such disbursements. Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains, and losses. Exhibit at all reasonable times the books of account and financial records to any director of the Corporation, or to his or her agent or attorney, on request therefor. Render to the president and directors, whenever requested, an account of any or all of his or her transactions as treasurer and of the financial condition of the Corporation. Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports. In general, perform all duties incident to the office of treasurer and such other duties as may be required by

law, by the Certificate of Incorporation of the Corporation, or by these By-Laws, or which may be assigned to him or her from time to time by the Board.

Section 10. Compensation. The salaries of the officers, if any, shall be fixed from time to time by resolution of the Board. In all cases, any salaries received by officers of this Corporation shall be reasonable and given in return for services actually rendered to or for the Corporation. All officer salaries shall be approved in advance in accordance with this Corporation's conflict of interest policy, as set forth in Article 9 of these By-Laws.

ARTICLE V – COMMITTEES

Section 1. Executive Committee. The Executive Committee shall consist of the President, Vice President, Treasurer and Secretary.

Section 2. Other Committees. The Corporation shall have such other committees as may from time to time be designated by resolution of the Board. These committees may consist of persons who are not also members of the Board and shall act in an advisory capacity to the Board.

Section 3. Meetings and Action of Committees. Meetings and action of committees shall be governed by, noticed, held, and taken in accordance with the provisions of these By-Laws concerning meetings of the Board, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its members for the Board and its members, except that the time for regular and special meetings of committees may be fixed by resolution of the Board or by the committee. The Board may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these By-Laws.

ARTICLE VI – EXECUTION OF INSTRUMENTS, DEPOSITS, AND FUNDS

Section 1. Execution of Instruments. The Board, except as otherwise provided in these By-Laws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

Section 2. Checks and Notes. Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the treasurer and countersigned by the president of the Corporation.

Section 3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the nonprofit purposes of this Corporation.

ARTICLE VII – CORPORATE RECORDS, REPORTS, AND SEAL

Section 1. Maintenance of Corporate Records. The Corporation shall keep at its office or at a place designated by the Board:

a. Minutes of all meetings of directors, committees of the Board, and, if this Corporation has members, of all meetings of members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;

b. Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains, and losses;

c. A record of its members, if any, indicating their names and addresses and, if applicable, the class of membership held by each member and the termination date of any membership;

d. A copy of the Corporation's Certificate of Incorporation and By-Laws as amended to date, which shall be open to inspection by the members, if any, of the Corporation within ten (10) days of their request.

Section 2. Corporate Seal. The Board may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

Section 3. Directors' Inspection Rights. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation, and shall have such other rights to inspect the books, records, and properties of this Corporation as may be required under the Certificate of Incorporation, other provisions of these By-Laws, and provisions of law within ten (10) days of their request.

Section 4. Members' Inspection Rights. If this Corporation has any members, then each and every member shall have the following inspection rights, for a purpose reasonably related to such person's interest as a member:

a. To inspect and copy the record of all members' names, addresses, and voting rights, at reasonable times, upon written demand on the secretary of the Corporation, which demand shall state the purpose for which the inspection rights are requested.

b. To obtain from the secretary of the Corporation, upon written demand on, and payment of a reasonable charge to, the secretary of the Corporation, a list of the names, addresses, and voting rights of those members entitled to vote for the election of directors as of the most recent record date for which the list has been compiled or as of the date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available within a reasonable time after the demand is received by the secretary of the Corporation or after the date specified therein as of which the list is to be compiled.

c. To inspect at any reasonable time the books, records, or minutes of proceedings of the members or of the Board or committees of the Board, upon written demand on the secretary of the Corporation by the member, for a purpose reasonably related to such person's interests as a member. Members shall have such other rights to inspect the books, records, and properties of this Corporation as may be required under the Certificate of Incorporation, other provisions of these By-Laws, and provisions of law.

Section 5. Right To Copy And Make Extracts. Any inspection under the provisions of this article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

Section 6. Periodic Report. The Board shall cause any annual or periodic report required under law to be prepared and delivered to an office of this state or to the members, if any, of this Corporation, to be so prepared and delivered within the time limits set by law.

ARTICLE VIII – IRC 501(C)(3) TAX EXEMPTION PROVISIONS

Section 1. Limitations on Activities. No substantial part of the activities of this Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Internal Revenue Code), and this Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of, or in opposition to, any candidate for public office. Notwithstanding any other provisions of these By-Laws, this Corporation shall not carry on any activities not permitted to be carried on (a) by a Corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or (b) by a Corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

Section 2. Prohibition Against Private Inurement. No part of the net earnings of this Corporation shall inure to the benefit of, or be distributable to, its members, directors or trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of this Corporation.

Section 3. Distribution of Assets. Upon the dissolution of this Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation, shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of this state.

Section 4. Private Foundation Requirements and Restrictions. In any taxable year in which this Corporation is a private foundation as described in Section 509(a) of the Internal Revenue Code, the Corporation 1) shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Internal Revenue Code; 2) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; 3) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; 4) shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Internal Revenue Code; and 5) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

ARTICLE IX - CONFLICT OF INTEREST AND COMPENSATION APPROVAL POLICIES

Section 1. Purpose of Conflict of Interest Policy. The purpose of this conflict of interest policy is to protect this tax-exempt Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation or any "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations and which might result in a possible "excess benefit transaction" as defined in Section 4958(c)(1)(A) of the Internal Revenue Code and as amplified by Section 53.4958 of the IRS Regulations. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Section 2. Definitions:

a. Interested Person. Any director, principal officer, member of a committee with governing board delegated powers, or any other person who is a "disqualified person" as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS regulations, who has a direct or indirect financial interest, as defined below, is an interested person.

b. Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

1. An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,

2. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

c. A financial interest is not necessarily a conllict of interest. Under Section 3, paragraph B, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Section 3. Conflict of Interest Avoidance Procedures

a. Duty to Disclose. In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the Board and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

b. Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

c. Procedures for Addressing the Conflict of Interest. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement. After exercising due diligence, the governing board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

d. Violations of the Conflicts of Interest Policy. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or

committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Section 4. Records of Board and Board Committee Proceedings. The minutes of meetings of the governing board and all committees with board delegated powers shall contain:

a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.

b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Section 5. Compensation Approval Policies. A voting member of the governing Board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation. When approving compensation for directors, officers and employees, contractors, and any other compensation contract or arrangement, in addition to complying with the conflict of interest requirements and policies contained in the preceding and following sections of this article as well as the preceding paragraphs of this section of this article, the Board or a duly constituted compensation committee of the Board shall also comply with the following additional requirements and procedures:

a. The terms of compensation shall be approved by the Board or compensation committee prior to the first payment of compensation,

b. All members of the Board or compensation committee who approve compensation arrangements must not have a conflict of interest with respect to the compensation arrangement as specified in IRS Regulation Section 53.4958-6(c)(iii), which generally requires that each board member or committee member approving a compensation arrangement between this organization and a "disqualified person" (as defined in Section 4958(f)(1) of the Internal Revenue Code and as amplified by Section 53.4958-3 of the IRS Regulations):

1. Is not the person who is the subject of the compensation arrangement, or a family member of such person;

2. Is not in an employment relationship subject to the direction or control of the person who is the subject of the compensation arrangement

3. Does not receive compensation or other payments subject to approval by the person who is the subject of the compensation arrangement

4. Has no material financial interest affected by the compensation arrangement; and

5. Does not approve a transaction providing economic benefits to the person who is the subject of the compensation arrangement, who in turn has approved or will approve a transaction providing benefits to the Board or committee member.

c. The Board or compensation committee shall obtain and rely upon appropriate data as to comparability prior to approving the terms of compensation. Appropriate data may include the following:

1. Compensation levels paid by similarly situated organizations, both taxable and tax exempt, for functionally comparable positions. "Similarly situated" organizations are those of a similar size, purpose, and with similar resources;

2. The availability of similar services in the geographic area of this organization;

3. Current compensation surveys compiled by independent firms;

4. Actual written offers from similar institutions competing for the services of the person who is the subject of the compensation arrangement;

5. As allowed by IRS Regulation 4958-6, if this organization has average annual gross receipts (including contributions) for its three prior tax years of less than $1 million, the board or compensation committee will have obtained and relied upon appropriate data as to comparability if it obtains and relies upon data on compensation paid by three comparable organizations in the same or similar communities for similar services.

d. The terms of compensation and the basis for approving them shall be recorded in written minutes of the meeting of the Board or compensation committee that approved the compensation. Such documentation shall include:

1. The terms of the compensation arrangement and the date it was approved;

2. The members of the Board or compensation committee who were present during debate on the transaction, those who voted on it, and the votes cast by each board or committee member;

3. The comparability data obtained and relied upon and how the data was obtained;

4. If the Board or compensation committee determines that reasonable compensation for a specific position in this organization or for providing services under any other compensation arrangement with this organization is higher or lower than the

range of comparability data obtained, the Board or committee shall record in the minutes of the meeting the basis for its determination;

5. If the Board or committee makes adjustments to comparability data due to geographic area or other specific conditions, these adjustments and the reasons for them shall be recorded in the minutes of the Board or committee meeting;

6. Any actions taken with respect to determining if a board or committee member had a conflict of interest with respect to the compensation arrangement, and if so, actions taken to make sure the member with the conflict of interest did not affect or participate in the approval of the transaction (for example, a notation in the records that after a finding of conflict of interest by a member, the member with the conflict of interest was asked to, and did, leave the meeting prior to a discussion of the compensation arrangement and a taking of the votes to approve the arrangement);

7. The minutes of board or committee meetings at which compensation arrangements are approved must be prepared before the later of the date of the next board or committee meeting or 60 days after the final actions of the Board or committee are taken with respect to the approval of the compensation arrangements. The minutes must be reviewed and approved by the Board and committee as reasonable, accurate, and complete within a reasonable period thereafter, normally prior to or at the next board or committee meeting following final action on the arrangement by the Board or committee.

Section 6. Annual Statements. Each director, principal officer, and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

a. Has received a copy of the conflicts of interest policy;

b. Has read and understands the policy;

c. Has agreed to comply with the policy; and

d. Understands the Corporation is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 7. Periodic Reviews. To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's-length bargaining;

b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

Section 8. Use of Outside Experts. When conducting the periodic reviews as provided for in Section 7, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

ARTICLE X – AMENDMENT OF BY-LAWS

Section 1. Amendment. Subject to the power of the members, if any, of this Corporation to adopt, amend, or repeal the By-Laws of this Corporation and except as may otherwise be specified under provisions of law, these By-Laws, or any of them, may be altered, amended, or repealed and new By-Laws adopted by approval of the Board.

ARTICLE XI – CONSTRUCTION AND TERMS

If there is any conflict between the provisions of these By-Laws and the Certificate of Incorporation of this Corporation, the provisions of the Certificate of Incorporation shall govern. Should any of the provisions or portions of these By-Laws be held unenforceable or invalid for any reason, the remaining provisions and portions of these By-Laws shall be unaffected by such holding.

All references in these By-Laws to a section or sections of the Internal Revenue Code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of any future federal tax code.

ARTICLE XII – MEMBERS

Section 1. Determination and Rights of Members. The Corporation shall have only one class of members. No member shall hold more than one membership in the Corporation. Except as expressly provided in or authorized by the Certificate of Incorporation, the By-Laws of this Corporation, or provisions of law, all memberships shall have the same rights, privileges, restrictions, and conditions.

Section 2. Qualifications of Members. Membership in the Corporation shall be open to any Individual or organization worldwide that is active in, or has an interest in, the development of the Corporation.

Section 3. Fees and Dues. Membership fees shall be proposed by the Executive Committee and must be approved by a majority of the Members. Once the initial fees have been established, any change shall be proposed by the Executive Committee and must be approved by a majority of the members at the annual general meeting.

Section 4. Number of Members. There is no limit on the number of members the Corporation may admit.

Section 5. Membership Book. The Corporation shall keep a membership book containing the name and address of each member. Termination of the membership of any member shall be recorded in the book, together with the date of termination of such membership. Such book shall be kept at the Corporation's principal office or at a place designated by the Board.

Section 6. Non-liability of Members. A member of this Corporation is not, as such, personally liable for the debts, liabilities, or obligations of the Corporation.

Section 7. Non-transferability of Memberships. No member may transfer a membership or any right arising therefrom. All rights of membership cease upon the member's death.

Section 8. Termination of Membership. The membership of a member shall terminate upon the occurrence of any of the following events:

1. Upon his or her notice of such termination delivered to the president or secretary of the Corporation personally or by mail, such membership to terminate upon the date of delivery of the notice or date of deposit in the mail.

2. If this Corporation has provided for the payment of dues by members, upon a failure to renew his or her membership by paying dues on or before their due date, such termination to be effective thirty (30) days after a written notification of delinquency is given personally or mailed to such member by the secretary of the Corporation. A member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the member's receipt of the written notification of delinquency.

3. After providing the member with reasonable written notice and an opportunity to be heard either orally or in writing, upon a determination by the Board that the member has engaged in conduct materially and seriously prejudicial to the interests or purposes of the Corporation. Any person expelled from the Corporation shall receive a refund of dues already paid for the current dues period. All rights of a member in the Corporation shall cease on termination of membership as herein provided.

ARTICLE XIII – MEETINGS OF MEMBERS

Section 1. Place of Meetings. Meetings of members shall be held at the principal office of the Corporation or at such other place or places as may be designated from time to time by resolution of the Board.

Section 2. Regular Meetings. The Corporation shall hold an annual general meeting once a year at a time and place determined by the Executive Committee. During the meeting, members may discuss, in addition to any other business that may be transacted, the report of the Executive Committee, the financial statements of the previous fiscal year and the report of the auditors.

Section 3. Special Meetings of Members. Special meetings of the members shall be called by the Board, the chairperson of the Board, or the president of the Corporation, or, if different, by the persons specifically authorized under the laws of this state to call special meetings of the members.

Section 4. Notice of Meetings. Unless otherwise provided by the Certificate of Incorporation, these By-Laws, or provisions of law, notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the Corporation, with postage prepaid. Personal notification includes notification by telephone, facsimile or email, provided however, in the case of facsimile or email notification, the member to be contacted shall acknowledge personal receipt of the facsimile notice by a return message or telephone call within twenty-four hours of the first facsimile or email transmission.

The notice of any meeting of members at which directors are to be elected shall also state the names of all those who are nominees or candidates for election to the Board at the time notice is given.

Whenever any notice of a meeting is required to be given to any member of this Corporation under provisions of the Certificate of Incorporation, these By-Laws, or the law of this state, a waiver of notice in writing signed by the member, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

Section 5. Quorum for Meetings. At any meeting of Members, the presence in person, or by proxy of Members entitled to cast one-tenth the total number of votes entitled to be cast at such meeting, shall constitute a quorum. If a quorum is not present at any meeting of the Members, a majority of the Members present and entitled to vote may adjourn the meeting from time to time without further notice. If a quorum is present, the affirmative vote of the majority of the Members represented at the meeting and entitled to vote on a matter shall be the act of the Members, unless the vote of a greater number is required by law, the Articles of Incorporation or these By-Laws.

Section 6. Majority Action as Membership Action. Every act or decision done or made by a majority of voting members present in person or by proxy at a duly held meeting at which a

quorum is present is the act of the members, unless the Certificate of Incorporation, these By-Laws, or provisions of law require a greater number.

Section 7. Voting Rights. Each member is entitled to one vote on each matter submitted to a vote by the members. Voting at duly held meetings shall be by voice vote, or by electronic vote. Election of Directors, however, shall be by written ballot or electronic vote.

Section 8. Action by Written Ballot. Except as otherwise provided under the Certificate of Incorporation, these By-Laws, or provisions of law, any action which may be taken at any regular or special meeting of members may be taken without a meeting if the Corporation distributes a written ballot to each member entitled to vote on the matter. The ballot shall:

1. Set forth the proposed action;

2. Provide an opportunity to specify approval or disapproval of each proposal;

3. Indicate the number of responses needed to meet the quorum requirement and, except for ballots soliciting votes for the election of directors, state the percentage of approvals necessary to pass the measure submitted; and

4. Shall specify the date by which the ballot must be received by the Corporation in order to be counted. The date set shall afford members a reasonable time within which to return the ballots to the Corporation. Ballots shall be mailed or delivered in the manner required for giving notice of membership meetings as specified in these By-Laws.

Approval of action by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Directors may be elected by written ballot. Such ballots for the election of directors shall list the persons nominated at the time the ballots are mailed or delivered.

Section 9. Conduct of Meetings. Meetings of members shall be presided over by the chairperson of the Board, or, if there is no chairperson, or in his or her absence, by the president of the Corporation or, in his or her absence, by the vice president of the Corporation or, in the absence of all of these persons, by a chairperson chosen by a majority of the voting members present at the meeting. The secretary of the Corporation shall act as secretary of all meetings of members, provided that, in his or her absence, the presiding officer shall appoint another person to act as secretary of the meeting.

MEMBERS OF THE BOARD OF DIRECTORS

1. Kamilah Holder
   244 5th Ave, Suite 2022
   New York, NY 10001

2. Omar Holder
   1250 East 95th Street
   Brooklyn, NY 11236

3. Sasha O'Connor
   817 Pleasant Road
   Yeadon, PA 19050

4. Carrie Ann Powell
   302A W 12th Street, #238
   New York, NY 10014

NYU Langone
MEDICAL CENTER

January 24, 2013

HTH Lung Foundation
244 5th Ave, Suite 2022
New York, New York 10001

Re: HTH Lung Foundation

Dear Ms. Holder,

This letter confirms that the Division of Pulmonary, Critical Care & Sleep Medicine at NYU Langone Medical Center will accept funds raised by the Hazel Thomas Holder Lung Foundation, Inc. Please feel free to contact us at 212-263-6479 if you need any further information.

Sincerely yours,

William N. Rom, MD, MPH
Director, Division of Pulmonary, Critical Care and Sleep Medicine
Sol and Judith Bergstein Professor of Medicine and Environmental Medicine
New York University School of Medicine

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: July 29, 2013

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of The Foundation of St. Mary's Hospital at Amsterdam, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of The Foundation of St. Mary's Hospital at Amsterdam, Inc. The Corporation seeks approval to change its name to "The Foundation of St. Mary's Healthcare, Inc." Along with the appropriate change to the Corporation's name, the Certificate of Amendment will also amend the Certificate of Incorporation to (1) include the most recent references to the Internal Revenue Code, (2) remove the requirement that the sole member of the corporation be the Provincial Council of the Sisters of St. Joseph of Carondelet, (3) remove the requirement that the corporate office be located in the City of Amsterdam, and (4) update the address to which the Secretary of State is to address service of process. These other changes do not require the approval of the Public Health and Health Planning Council.

As set forth in the attached letter from Karen E. Sosler, attorney for the Corporation, the reason for the change is to reflect the recent change in the name of its beneficiary, St. Mary's Hospital at Amsterdam, to St. Mary's Healthcare.

The Foundation of St. Mary's at Amsterdam, Inc. is a type B not-for-profit corporation that was established to raise funds for the support of St. Mary's Healthcare, Inc., a corporation established pursuant to Article 28 of the Public Health Law. Therefore, Public Health and Health Planning Council approval for a change of corporate name is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (2).

Attached is the duly executed Certificate of Amendment of the Certificate of Incorporation. The Department has no objection to the change of name, and the Certificate of Amendment is in legally acceptable form.

JED: JCL
Attachments

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

Attorneys and Counselors at Law

Michael J. Cunningham
Robert H. Iseman
Carol A. Hyde
Brian M. Culnan
Richard A. Frankel
Richard A. Mitchell
Karen E. Sosler
James P. Lagios
John F. Queenan
Joshua E. Mackey
David R. Wise+

Frederick C. Riester
(1942-2012)

9 Thurlow Terrace • Albany, NY 12203
Phone 518-462-3000 Facsimile 518-462-4199
www.icrh.com

2649 South Road • Poughkeepsie, NY 12601
Phone 845-473-8100 Facsimile 845-473-8777

Laurie K. Chisolm**
Penny M. Hahn
Marc A. Antonucci
Linda J. Terner**
Omer Gil
Frank P. Izzo
Michael W. Deyo
Michelle Almeida+
Brett A. Bush†

+Also Admitted in Connecticut
*Also Admitted in Massachusetts
**Also Admitted in New Jersey
***Also Admitted in Vermont
†Also Admitted in Virginia

July 8, 2013

VIA FEDERAL EXPRESS & EMAIL

Ms. Colleen Frost
Executive Secretary, Public Health and Health Planning Council
NYS Department of Health
Health Facilities Planning
Hedley Building, 6th Floor
Troy, New York 12180

Re: PHHPC Approval of Name Change
The Foundation of St. Mary's Hospital at Amsterdam, Inc.

Dear Ms. Frost:

On behalf of our client, The Foundation of St. Mary's Hospital at Amsterdam, Inc. (the "Foundation"), we seek the Public Health and Health Planning Council's approval of the following:

1. Changing the Foundation's name to "The Foundation of St. Mary's Healthcare, Inc." One of the Foundation's purposes is to support St. Mary's Healthcare, which is a hospital licensed under Article 28 of the Public Health Law (the "Hospital"). This organization was formerly called "St. Mary's Hospital at Amsterdam, Inc.," but changed its name effective April 21, 2011. Therefore, the Foundation seeks a similar change to its name.

2. Amending the purposes section in the Foundation's certificate of incorporation to (a) replace references to the Hospital's old name with references to its new name, (b) identify the most recent version of the Internal Revenue Code, and (c) remove reference to the Foundation having a sole member, which it no longer does. None of these amendments enlarge, limit or otherwise change the Foundation's purposes.

Enclosed is an executed Certificate of Amendment of the Foundation's Certificate of Incorporation, which shows the amendments discussed above.

If you have any questions, please feel free to call me at (518) 462-3000.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

Karen E. Sosler

Karen E. Sosler

Enclosure

cc: Julieann Diamond, Esq.

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION OF ST. MARY'S HOSPITAL AT AMSTERDAM, INC.

(Under Section 803 of Not-For-Profit Corporation Law)

The undersigned, the President of The Foundation of St. Mary's Hospital at Amsterdam, Inc., hereby certifies that:

1. The name of the corporation is The Foundation of St. Mary's Hospital at Amsterdam, Inc. (hereinafter "the Corporation"). The name of the Corporation has not previously been changed.

2. The Certificate of Incorporation was filed by the Department of State on January 4, 1984.

3. The Corporation was formed under Section 402 of the Not-For-Profit Corporation Law.

4. The Corporation is a corporation as defined in Section 102(a)(5) of the Not-For-Profit Corporation Law of the State of New York.

5. The Corporation is a Type B corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York, and it shall continue to be a Type B corporation.

6. The Certificate of Incorporation of the Corporation is amended as follows:

(a) Paragraph 1 is amended to change the name of the Corporation and move the address for service of process to another paragraph, and shall read in its entirety as follows:

"1. The name of the Corporation is The Foundation of St. Mary's Healthcare, Inc."

(b) Paragraph 3, regarding the Corporation's purposes, is amended to (a) replace the name St. Mary's Hospital at Amsterdam, Inc. with its new name, St. Mary's Healthcare, (b) identify the most recent version of the Internal Revenue Code, and (c) remove reference to the Corporation having a sole member, shall read in its entirety as follows:

"3. The purposes for which the Corporation is formed are: To assist St. Mary's Healthcare, a not-for-profit corporation organized and existing pursuant to the Not-For-Profit Corporation Law of the State of New York and exempted from income tax pursuant to its exemption under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to develop and expand its services to the community by mobilizing and coordinating the efforts of community leaders, including those with expertise in such fields as finance, corporate management, trusts, insurance, investments, real estate and law; providing a focal point and being a recipient for philanthropic support; to solicit charitable contributions to The Foundation of St. Mary's Healthcare, Inc. and stimulating such sources of revenue as bequests, devises, life income contracts, trusts, both inter vivos and testamentary gifts, both restricted and unrestricted, unitrusts and pooled income funds and other sources of revenue and providing for the effective management and investment thereof; and granting funds to St. Mary's Healthcare; and granting funds to such other organizations under the Internal Revenue Code of 1986, as amended, as the Foundation may deem appropriate, provided St. Mary's Healthcare is unable or unwilling to accept such funds. Nothing herein contained shall authorize The Foundation of St. Mary's Healthcare, Inc. to establish, operate, construct, lease or maintain a hospital or to provide hospital services or health related services or to operate a drug maintenance program, a certified home health agency, a hospice, or a health maintenance organization, or to provide a comprehensive health services plan as defined in and covered by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law. Notwithstanding any other provision of these articles, this Foundation is organized exclusively for charitable, educational, religious, or scientific purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended."

The foregoing amendments do not change the type of corporation the Corporation is under Section 201 of the Not-For-Profit Corporation Law.

(c) Paragraph 6, regarding the location of the Corporation's office, is amended to read in its entirety as follows:

"6. The county in which the Corporation's office is located is the County of Montgomery, New York."

(d) Paragraph 7, regarding the territory in which the Corporation operates, and

Paragraph 8, regarding the initial trustees, are omitted.

(e) Paragraphs 9, 10, 11, 12, and 13 are renumbered as Paragraphs 7, 8, 9, 10, and 11, respectively.

(f) Newly renumbered Paragraph 9, regarding dissolution of the Corporation, is amended to replace the name of St. Mary's Hospital at Amsterdam, Inc. with St. Mary's Healthcare and remove reference to the sole member, and shall read in its entirety as follows:

"9. In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation, after necessary expenses thereof, shall be distributed to such organization or not-for-profit corporation as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, subject to an order of a Justice of the Supreme Court of the State of New York; primary recipient of corporate assets shall be St. Mary's Healthcare or its successor; any other 501(c)(3) organization or not-for-profit corporation shall only receive such assets if St. Mary's Healthcare is not in existence, no longer a qualified distributee, or is unable or unwilling to accept such distribution."

(g) Newly renumbered Paragraph 10 is amended to remove reference to the Society of the Sisters of St. Joseph of Carondelet, Albany Province, and shall read in its entirety as follows:

"10. The Corporation shall, at all times, act in a manner consistent with the tenets and values of the Roman Catholic Church. In this regard, the Corporation shall serve as a vehicle for supporting and enhancing the health care mission of the Roman Catholic Church."

(h) Paragraph 14, regarding the subscriber, is omitted.

(i) New Paragraph 12, regarding the address for the service of process, is added and shall read in its entirety as follows:

"12. The Secretary of State is hereby designated as the agent of the Corporation upon whom any 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: The Foundation of St. Mary's Healthcare, Inc., 427 Guy Park Avenue, Amsterdam, New York 12010."

8. This Certificate of Amendment was authorized by a majority vote of the entire Board of Directors of the Corporation in accordance with Section 802(a)(2) of the Not-For-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned has executed and signed this Certificate of Amendment and affirmed as true the statements made therein under penalties of perjury this 19th day of February, 2013.

Gregory Abbatisti, President

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

THE FOUNDATION OF ST. MARY'S HOSPITAL AT AMSTERDAM, INC.

(Under Section 803 of Not-For-Profit Corporation Law)

Filed by:

Karen E. Sosler, Esq.
Iseman, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, NY 12203

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel

DATE: August 23, 2013

SUBJECT: Proposed Dissolution of The Linden Foundation, Inc.

The Linden Foundation, Inc. (the "Foundation") requests Public Health and Health Planning Council ("PHHPC") approval of its proposed Certificate of Dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1003 and 10 NYCRR Part 650.

The Foundation was formed as a New York not-for-profit corporation in 1985 with the approval of the Public Health Council. The Foundation was created to support and benefit the Brookdale Hospital Medical Center ("Brookdale"), a hospital licensed under Article 28 of the Public Health Law. As explained in greater detail in the attached letter of May 30, 2013, the Foundation now seeks dissolution because the Foundation is currently inactive with no assets or liabilities and has not been operational for a number of years. Because the Foundation is no longer serving the purposes for which it was formed, the Board of Directors of the Foundation and the Board of Trustees of Brookdale Health System, Inc. (sole member and parent company of Brookdale) have determined that it is in the best interests of the Foundation and Brookdale that the Foundation be dissolved.

Attached are the following documents: (1) a copy of the proposed Certificate of Dissolution; (2) a copy of the proposed verified petition seeking court approval of the proposed dissolution; (3) a certified copy of the proposed Plan of Dissolution; and (4) memoranda from Tamar Rosenberg, attorney for the Foundation, stating the public need for dissolution.

The proposed Certificate of Dissolution is in legally acceptable form. In accordance with 10 NYCRR § 650.2, if PHHPC approves the dissolution of the Foundation, such approval must be contingent upon the approval of the plan of dissolution by a court of competent jurisdiction and the filing of a certified copy of the court order of such approval.

EPSTEIN BECKER & GREEN, P.C.
ATTORNEYS AT LAW
250 PARK AVENUE
NEW YORK, NEW YORK 10177-1211
212.351.4500
FAX: 212.878.8600
WWW.EBGLAW.COM

TAMAR R. ROSENBERG
TEL: 212.351.4514
FAX: 212.878-8614
TROSENBERG@EBGLAW.COM

May 30, 2013

VIA FEDEX

Director, Bureau of House Counsel
Division of Legal Affairs
NYS Department of Health
Corning Tower, Rm 2484
Empire State Plaza
Albany, New York 12237

Re: Request for the Consent of the Public Health and Health Planning Council to the Dissolution of The Linden Foundation, Inc.

Dear Sir/Madam:

We are writing to request that the Public Health and Health Planning Council (the "PHHPC") grant its consent to the filing of the attached Certificate of Dissolution for The Linden Foundation, Inc. (the "Foundation").

The Foundation is a New York not-for-profit corporation that was incorporated for purposes of supporting and benefiting the Brookdale Hospital Medical Center, a hospital licensed under Article 28 of the New York Public Health Law, and other related health care entities located in Brooklyn, New York, through fundraising and other means. The New York State Department of Health's consent was originally obtained in connection with the incorporation of the Foundation. Accordingly, the Department of Health's consent is also required as a prerequisite to the filing of the Foundation's Certificate of Dissolution with the New York Department of State.

In furtherance of obtaining the PHHPC's consent to the filing of the Foundation's Certificate of Dissolution, we have enclosed the following documentation:

- The Certificate of Dissolution of the Foundation (**Attachment A**);
- A certified copy of the Plan of Dissolution of the Foundation (**Attachment B**):

- A draft of the Verified Petition to the Attorney General for Approval of the Foundation's Certificate Dissolution (**Attachment C**);

- A copy of the resolutions of the Board of Directors of the Foundation authorizing, *inter alia*, the dissolution of the Foundation (**Attachment D**);

- A copy of the resolutions of the Board of Trustees of the sole member of the Foundation authorizing, *inter alia*, the dissolution of the Foundation (**Attachment E**); and

- A copy of the Certificate of Incorporation of the Foundation, with the consent of the Department of Health annexed thereto (**Attachment F**).

Upon receipt of the PHHPC's consent to the filing of the Foundation's Certificate of Dissolution, we will submit the Verified Petition for Approval of the Foundation's Certificate of Dissolution to the Office of the New York State Attorney General for approval in accordance with such Office's procedures for the dissolution of New York not-for-profit corporations having no assets.

By way of background, the Foundation is currently inactive and has no assets or liabilities and has not been operational for a number of years. Given that the Foundation is no longer serving the purposes for which it was formed, the Board of Directors of the Foundation and the Board of Trustees of Brookdale Health System, Inc., the entity that is the sole member of the Foundation (and also the parent entity of the hospital system), have determined that it is in the best interests of the Foundation and the Brookdale Hospital Medical Center that the Foundation now be dissolved.

Given that the Foundation's dissolution is important in connection with a restructuring process underway for the Brookdale Hospital Medical Center and its affiliates intended to ensure their ongoing financial stability and viability, we respectfully request that the PHHPC expedite its review of the proposed dissolution.

If you have any questions or require any additional information, please contact me by telephone at (212) 351-4514, or by email at trosenberg@ebglaw.com. Thank you for your prompt attention to this matter.

Sincerely,

Tamar R. Rosenberg

Enclosures

CERTIFICATE OF DISSOLUTION

OF

THE LINDEN FOUNDATION, INC.

UNDER SECTION 1003 OF THE NOT-FOR-PROFIT CORPORATION LAW

I, _____, being the _____ of The Linden Foundation, Inc. (the "Corporation"), hereby certifies:

1. The name of the Corporation is The Linden Foundation, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on December 17, 1985.

3. The name and address of each of the Corporation's Directors and Officers are:

Name	Office	Residential Address
Irina Benfeld, Esq.	Director	1055 River Road, Apt. 610 Edgewater, New Jersey 07020
Anthony Clemenza, Sr.	Director	2277 East 66th Street Brooklyn, New York 11234
Isaac Kreizman, M.D.	Director	2235 East 66th Street Brooklyn, New York 11234
Asher Mestel, M.D.	Director	300 Mayfair Drive, North Brooklyn, New York 11234
Bishop Hugh Nelson	Director	653 Park Lane Valley Stream, New York 11581
Stephen Plotnick, Esq.	Director	41-42 Rys Terrace Fairlawn, New Jersey 07410
Richard Radutzky	Director	270 Chester Drive Roslyn, New York 11576
Alex Rovt, Ph.D.	Director and Chairman	2346 East 66th Street Brooklyn, New York 11234

Name	Office	Residential Address
Lowell Rubin	Director and Vice Chair	141 Argyle Road Brooklyn, New York 11218
Michael Scagnelli	Director	201 South Hill Road Grahamsville, New York 12740
Michael Spiegel	Director	2376 East 72nd Street Brooklyn, New York 11234
Laurence Zale	Director and Vice Chair	340 East 80th Street New York, New York 10021
Mark E. Toney	President & Chief Executive Officer	600 Riviera Isle Ft. Lauderdale, Florida 33301
Steven R. Korf	Chief Operating Officer	1595-14 North Central Avenue Valley Stream, New York 11580
James R. Porter	Chief Financial Officer	318 Hillside Avenue Charlotte, North Carolina 28209

4. At the time of its dissolution, the Corporation is a Type B corporation within the meaning of Section 201(b) of the New York Not-for-Profit Corporation Law ("NPCL").

5. At the time of authorization of the Corporation's Plan of Dissolution pursuant to NPCL Section 1002, the Corporation held no assets legally required to be used for a particular purpose.

6. The Corporation elects to dissolve.

7. The dissolution of the Corporation was authorized by (a) the affirmative vote of at least a majority of the Board of Directors of the Corporation pursuant to Section 1001(a) of the NPCL, and (b) the affirmative vote of at least a majority of the Board of Trustees of the sole member of the Corporation pursuant to Section 1002 of the NPCL.

8. The Corporation filed with the Attorney General a certified copy of its Plan of Dissolution pursuant to Section 1002(d) of the NPCL.

9. The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the Corporation had no assets or liabilities pursuant to Section 1001(b) of the NPCL.

10. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution this __ day of _____, 2013.

_____

By:
Title:

PLAN OF DISSOLUTION

OF

THE LINDEN FOUNDATION, INC.

UNDER SECTION 1001 OF THE NEW YORK NOT-FOR-PROFIT CORPORATION LAW

The Board of Directors of The Linden Foundation, Inc., a Type B New York not-for-profit corporation (the **"Foundation"**), by the affirmative vote of all of the Directors present at a duly constituted meeting thereof held on the 4th day of April, 2013, having considered the advisability of voluntarily dissolving the Foundation, and it being the conclusion of the Board of Directors that the dissolution of the Foundation is advisable and in the best interests of the Foundation and the sole member of the Foundation, Brookdale Health System, Inc. (the **"Sole Member"**), has acted in accordance with Section 1001(a) of the New York Not-for-Profit Corporations Law (the **"NPCL"**) to approve and adopt this Plan of Dissolution (the **"Plan of Dissolution"**) for the voluntary dissolution of the Foundation, and the Board of Directors does hereby recommend that this Plan of Dissolution be approved by Brookdale Health System, Inc., in its capacity as the sole member of the Foundation, and that the Foundation be dissolved in accordance with the following plan:

1. Upon resolution of the Board of Directors of the Foundation adopting this Plan of Dissolution, the Board shall submit this Plan of Dissolution to the Sole Member of the Foundation for its approval.

2. Approval of the dissolution of the Foundation is required to be obtained from the New York State Public Health and Health Planning Council and the New York State Department of Health pursuant to Sections 404 (o) and (t) & 1002(c) of the NPCL.

3. The Foundation has no assets or liabilities.

4. Within ten (10) days after the authorization of the Plan of Dissolution by the Board of Directors of the Foundation and the sole member of the Foundation, a certified copy of the Plan of Dissolution shall be filed with the Attorney General of the State of New York pursuant to Section 1002(d) of the NPCL, together with a copy of the proposed Certificate of Dissolution for Authorization by the Attorney General for filing with the New York State Department of State pursuant to Section 1003 of the NPCL.

5. Upon receipt of authorization of the Attorney General, the Certificate of Dissolution shall be filed with the New York State Department of State.

Certification

The undersigned, Arthur J. Fried, being the Assistant Secretary of The Linden Foundation, Inc., hereby certifies under penalties for perjury that: (i) in accordance with Section

1001(a) of the NPCL, the Board of Directors of The Linden Foundation, Inc. has adopted the foregoing Plan of Dissolution by the unanimous vote of the Directors present at a duly constituted meeting of the Board of Directors held on the 4th day of April, 2013; and (ii) the foregoing Plan of Dissolution was approved by the sole member of The Linden Foundation, Inc. at a duly constituted meeting of the Board of Trustees of the sole member of The Linden Foundation, Inc. held on the 19th day of March, 2013 in accordance with Section 1002(a) of the NPCL.

Dated: May 24, 2013

Name: Arthur J. Fried
Title: Assistant Secretary

DRAFT

In the Matter of the Application	:	
of	:	
The Linden Foundation, Inc.	:	VERIFIED PETITION
For Approval of Certificate of Dissolution pursuant to Section 1003 of the Not-for-Profit Corporation Law.	:	

TO: THE OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
120 Broadway, 3rd Floor
New York, NY 100271-0332

Petitioner, The Linden Foundation, Inc. ("**Petitioner**"), by its attorneys, Epstein Becker & Green, P.C., for its Verified Petition herein respectfully alleges:

1. Petitioner, whose principal address is Linden Blvd. at Brookdale Plaza, Brooklyn, New York 11212, was incorporated pursuant to Section 402 of New York's Not-for-Profit Corporation Law (the "**NPCL**") on December 17, 1985. A copy of the Certificate of Incorporation is attached as **Exhibit 1**.

2. The names, addresses and titles of Petitioner's Officers and Directors are as follows:

Name	Office	Residential Address
Irina Benfeld, Esq.	Director	1055 River Road, Apt. 610 Edgewater, New Jersey 07020
Anthony Clemenza, Sr.	Director	2277 East 66th Street Brooklyn, New York 11234
Isaac Kreizman, M.D.	Director	2235 East 66th Street Brooklyn, New York 11234
Asher Mestel, M.D.	Director	300 Mayfair Drive, North Brooklyn, New York 11234
Bishop Hugh Nelson	Director	653 Park Lane Valley Stream, New York 11581
Stephen Plotnick, Esq.	Director	41-42 Rys Terrace Fairlawn, New Jersey 07410

Name	Office	Residential Address
Richard Radutzky	Director	270 Chester Drive Roslyn, New York 11576
Alex Rovt, Ph.D.	Director and Chairman	2346 East 66th Street Brooklyn, New York 11234
Lowell Rubin	Director and Vice Chair	141 Argyle Road Brooklyn, New York 11218
Michael Scagnelli	Director	201 South Hill Road Grahamsville, New York 12740
Michael Spiegel	Director	2376 East 72nd Street Brooklyn, New York 11234
Laurence Zale	Director and Vice Chair	340 East 80th Street New York, New York 10021
Mark E. Toney	President & Chief Executive Officer	600 Riviera Isle Ft. Lauderdale, Florida 33301
Steven R. Korf	Chief Operating Officer	1595-14 North Central Avenue Valley Stream, New York 11580
James R. Porter	Chief Financial Officer	318 Hillside Avenue Charlotte, North Carolina 28209

3. The purposes for which the corporation was organized, as set forth in paragraph 3. of Petitioner's Certificate of Incorporation are as follows:

> "(a) To support and benefit Brookdale Hospital Medical Center and other health care organizations, and to assist such other organizations in the furtherance of their corporate purposes through fund-raising and by such other means as shall from time to time be found appropriate in connection with the foregoing and as are lawful for a not-for-profit corporation."

4. Petitioner is a Type B New York not-for-profit corporation.

5. A meeting of Petitioner's Board of Directors was held pursuant to duly given notice on April 4, 2013 at which a resolution was duly passed by a unanimous vote adopting a Plan of Dissolution and authorizing the filing of a Certificate of Dissolution in accordance with Section 1003 of the NPCL. A copy of the Plan of Dissolution, including a certification of a duly authorized Officer of Petitioner, is attached to this petition as **Exhibit 2**.

6. The Plan of Dissolution adopted by the Board of Directors of Petitioner was submitted for approval to Petitioner's sole member, Brookdale Health System, Inc., as required by Section

1002(a) of the NPCL. The Plan of Dissolution was approved by Brookdale Health System, Inc. by the unanimous adoption of resolutions by the Board of Trustees of Brookdale Health System, Inc. at a duly constituted meeting of such Board held on April 4, 2013. A copy of such resolutions, certified by a duly authorized Officer of Brookdale Health System, Inc., is attached to this Petition as **Exhibit 3**.

7. A certified copy of Petitioner's Plan of Dissolution was filed with the Office of the Attorney General.

8. Petitioner has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of Petitioner is required to be obtained from the New York State Department of Health – Public Health and Health Planning Council, pursuant to Section 1002 of the NPCL, and a copy of such approval is attached as **Exhibit 4**.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Section 1003 of the NPCL.

WHEREFORE, Petitioner requests that the New York State Attorney General approve the Certificate of Dissolution of The Linden Foundation, Inc., a not-for-profit corporation, pursuant to Section 1003 of the New York State Not-for-Profit Corporation Law.

IN WITNESS WHEREFORE, Petitioner has caused this Petition to be executed this ___ day of _____, 2013.

Epstein Becker & Green, P.C.

By: _____

Jay E. Gerzog, Esq.
Attorney for Petitioner
250 Park Avenue
New York, NY 10177
(212) 351-4940

VERIFICATION

STATE OF NEW YORK)
:SS.:
COUNTY OF NEW YORK)

_____, being duly sworn, deposes and says that I am _____ of The Linden Foundation, Inc., the Type B New York not-for-profit corporation named and described in the foregoing Petition, that I have read the foregoing Petition and know the contents thereof to be true to my own knowledge, except as to those matters that are stated on information and belief and as to those matters, I believe them to be true.

_____
By:

Sworn to before me this
_____ day of _____, 2013.

Notary Public

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

September 12, 2013

Home Health Agency Licensures **Exhibit # 14**

Number	Applicant/Facility
2071-L	Home Life Health Care, LLC d/b/a Alvita Care (Kings, Bronx, Queens, Richmond, New York and Westchester Counties)
2001-L	Effective Home Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
2090-L	Merchant Care Services, Inc. d/b/a BrightStar of White Plains (Bronx and Westchester Counties)
1615-L	Universal Home Care Agency of New York, Inc. (Bronx, Westchester, Kings, New York and Queens Counties)
2242-L	Mount View Assisted Living, Inc. (Niagara County)

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Home Life Health Care, LLC d/b/a Alvita Care
Address:	New York
County:	New York
Structure:	Limited Liability Company
Application Number:	2071-L

Description of Project:

Home Life Health Care, LLC d/b/a Alvita Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Home Life Health Care, LLC d/b/a Alvita Care is currently operational as a companion care agency.

The sole member of Home Life Health Care, LLC d/b/a Alvita Care is:

Tracy Ongena, 100%
Owner/Operator, Home Life Health Care, LLC d/b/a Alvita Care

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 236 Fifth Avenue, 9th Floor, New York, New York 10001:

Kings	Queens	New York
Bronx	Richmond	Westchester

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:	August 28, 2013

Division of Home & Community Based Care
Character and Competence Staff Review

Name of Agency:	Effective Home Care, LLC
Address:	Staten Island
County:	Richmond
Structure:	Limited Liability Company
Application Number:	2001-L

Description of Project:

Effective Home Care, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The members of the Effective Home Care, LLC comprises the following individuals:

Michael Kremerov, President, CEO – 10%
President, American Brotherhood for the Russian Disabled

Gary Kanovich, Vice President, COO – 30%
Retired

Irina Oleynikova, HHA, Administrator, Corporate Secretary – 30%
Social Services Coordinator, Lutheran Health Care Short Hills Housing for Seniors

Igor Fleysmaker, Finance Manager – 30%
President, Prime Aide Pharmacy, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 901 Patterson Avenue, Staten Island, New York 10306:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Physical Therapy	Occupational Therapy	Nutrition	Speech-Language Pathology
Respiratory Therapy	Nutrition	Housekeeper	Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	August 22, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Merchant Care Services, Inc. d/b/a BrightStar of White Plains
Address:	Harrison
County:	Westchester
Structure:	For-Profit
Application Number:	2090-L

Description of Project:

Merchant Care Services, Inc. d/b/a BrightStar of White Plains, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The applicant proposes to enter into a franchise agreement with Bright Star Franchising, LLC.

The applicant has authorized 200 shares of stock, which are owned as follows:

Pranav A. Merchant – 200 shares
Owner, BrightStar of White Plains (companion care)

The Board of Directors of Merchant Care Services, Inc. d/b/a BrightStar of White Plains is comprised by the following individual:

Pranav A. Merchant – President
(Previously Disclosed)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 600 Mamaroneck Avenue, Suite 447, Harrison, New York 10528.

Bronx Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Occupational Therapy
Respiratory Therapy	Physical Therapy	Homemaker	Speech Language Pathology
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:	July 11, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Universal Home Care Agency of New York, Inc.
Address:	Bronx
County:	Bronx
Structure:	For-Profit
Application Number:	1615-L

Description of Project:

Universal Home Care Agency of New York, 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 2,000 shares of stock, which are owned as follows:

Hector Rivera, LMSW – 2,000 Shares
Medical Social Worker, VNSNY
Medical Social Worker, Alpine Home Care, Inc.

The Board of Directors of Universal Home Care Agency of New York, Inc. comprises the following individuals:

Carlos R. Cortes – Treasurer
Residence Counselor, Community Residence Treatment Program - Bronx Lebanon Health Center

Leida L. Rivera Pirela, PCT – Secretary
Patient Care Technician, Bronx Lebanon Hospital

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 127 Dreiser Loop Suite 500, Bronx, NY 10475:

Bronx	Kings	New York	Queens
Westchester			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Physical Therapy
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Nutrition	Homemaker	Housekeeper	Medical Social Worker

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:	August 16, 2013

Division of Home & Community Based Services
Character and Competence Staff Review

Name of Agency:	Mount View Assisted Living, Inc.
Address:	Lockport
County:	Niagara
Structure:	For Profit Corporation
Application Number:	2242-L

Description of Project:

Mount View Assisted Living, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. Mount View Assisted Living, Inc. is a LHCSA applicant associated with an Assisted Living Program (ALP) applicant, Mount View Assisted Living, Inc.

The applicant has authorized 200 shares of stock. One share is owned by David Communities, LLC. The remaining 199 shares are unissued.

The members of the Board of Directors of Mount View Assisted Living, Inc. comprise the following individuals:

David Tosetto, President
Self employed

David Stapleton, Secretary
President/Owner, David Homes and Vanderbilt Properties

The members of David Communities, LLC comprise the following individuals:

David Tosetto, Member/Manager – 20%
Disclosed above

David Stapleton, Member – 80%
Disclosed above

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Niagara County from an office located at 5465 Upper Mountain Road, Lockport, New York 14094.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Nutrition	Personal Care	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation:	Contingent Approval
Date:	August 2, 2013