STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

October 3, 2013

10:00 a.m. or immediately following the Committee on Codes, Regulations and Legislation which is scheduled to begin at 9:30 a.m.

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

I. INTRODUCTION OF OBSERVERS

Dr. William Streck, Chairman

II. APPROVAL OF MINUTES

August 1, 2013 **Exhibit #1**

III. APPROVAL OF 2014 MEETING SCHEDULED

Exhibit #2

IV. REGULATION

Report of the Committee on Codes, Regulations and Legislation **Exhibit #3**

Angel Gutiérrez, M.D., Chair

For Information

13-13 Amendment of Section 12.3 of Title 10 NYCRR (Administration of Vitamin K to Newborn Infants)

12-20 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care Programs and Managed Long Term Care)

For Discussion

Section 405.4 of Part 405 of Title 10 NYCRR (Amendment to Hospital Sepsis Safety Protocols)

Part 23 of Title 10 NYCRR (Control of STDs)

V. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

B. Report of the Offices of Primary Care and Health Systems Management Activities

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

C. Report of the Office of Public Health Activities

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

VI. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

VII. HEALTH POLICY

Report on the Activities of the Committee on Health Planning

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

VIII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Jeffrey Kraut, Chair of Establishment and Project Review Committee

A. Adoption of the Ad Hoc Advisory Committee on Environmental and Construction Standard's Final Report and Recommendations — Exhibit #4

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

*****TO BE DISTRIBUTED UNDER SEPARATE COVER*****

B. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Continuing Care Retirement Community - Construction **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131304 C	Peconic Landing at Southold (Suffolk County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Upstate Request for Applications – Certified Home Health Agencies – Construction **Exhibit #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131186 C	HCR (Clinton County) Mr. Booth – Interest Ms. Hines - Interest	Approval
2.	131187 C	HCR (Madison County) Mr. Booth – Interest Ms. Hines - Interest	Approval

3.	131188 C	HCR (Schoharie County) Mr. Booth – Interest Ms. Hines – Interest	Contingent Approval
4.	121267 C	TLC Health Network-Lake Shore Hospital (Chautauqua County) Mr. Booth – Interest	Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

C. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132025 E	White Plains Hospital Center (Westchester County)	Contingent Approval
2.	132026 E	Northern Westchester Hospital (Westchester County)	Contingent Approval
3.	132027 E	Lawrence Hospital Center (Westchester County)	Contingent Approval
4.	132028 E	Phelps Memorial Hospital (Westchester County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132056 E	Eye Surgery Center of Westchester (Westchester County)	Approval

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #9**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	062287 E	SDTC – The Center for Discovery Incorporated (Sullivan County)	Contingent Approval
2.	131237 E	B&L Health, Inc. d/b/a Allhealth D&TC (Kings County)	Contingent Approval
3.	131258 B	AIDS Healthcare Foundation (Kings County)	Contingent Approval

	Number	Applicant/Facility	E.P.R.C. Recommendation
4.	131341 E	PALA Community Care, LLC d/b/a PALA Community Care (Kings County)	Contingent Approval

Residential Health Care Facility – Establish/Construct **Exhibit #10**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131195 E	River Ridge Operating, LLC d/b/a River Ridge Living Center (Montgomery County)	Contingent Approval

Certificate of Incorporation **Exhibit #11**

Applicant	E.P.R.C. Recommendation
The Hazel Thomas Holder Lung Foundation, Inc.	Approval

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

Applicant	E.P.R.C. Recommendation
The Foundation of St. Mary's Hospital at Amsterdam, Inc.	Approval

Certificate of Dissolution **Exhibit #13**

Applicant	E.P.R.C. Recommendation
The Linden Foundation, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #14**

Number	Applicant/Facility	E.P.R.C. Recommendation
2071-L	Home Life Health Care, LLC d/b/a Alvita Care (Kings, Bronx, Queens, Richmond, New York and Westchester Counties)	Contingent Approval
2001-L	Effective Home Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval

2090-L	Merchant Care Services, Inc. d/b/a BrightStar of White Plains (Bronx and Westchester Counties)	Contingent Approval
1615-L	Universal Home Care Agency of New York, Inc. (Bronx, Westchester, Kings, New York and Queens Counties)	Contingent Approval
2229-L	The Pavilion at Vestal, LLC (Broome County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

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

	Number	**Applicant/Facility**	**E.P.R.C. Recommendation**
1.	132057 E	Queens Endoscopy ASC, LLC (Allegany County) Mr. Booth - Interest	Approval

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #16**

	Number	**Applicant/Facility**	**E.P.R.C. Recommendation**
1.	131329 E	Planned Parenthood of Central and Western New York, Inc. (Erie County) Mr. Booth - Interest	Contingent Approval

Dialysis Services – Establish/Construct **Exhibit #17**

	Number	**Applicant/Facility**	**E.P.R.C. Recommendation**
1.	132065 E	Plattsburgh Associates, LLC (Clinton County) Dr. Bhat – Interest Mr. Booth - Interest	Contingent Approval

Residential Health Care Facility – Establish/Construct **Exhibit #18**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131107 E	JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center (Erie County) Mr. Booth – Interest Mr. Fensterman - Recusal	Contingent Approval
2.	131120 E	Essex Operations Associates, LLC d/b/a Essex Center for Rehabilitation and Healthcare (Essex County) Mr. Booth – Interest Mr. Fensterman - Recusal	Contingent Approval
3.	131193 E	Washington Operating Associates LLC d/b/a Washington Center for Rehabilitation and Healthcare (Washington County) Dr. Bhat – Recusal Mr. Fensterman – Recusal	Contingent Approval
4.	132079 E	Auburn Senior Services, Inc. (Cayuga County) Mr. Booth - Interest	Contingent Approval
5.	132093 B	Auburn Senior Services, Inc. (Cayuga County) Mr. Booth - Interest	Contingent Approval

Certified Home Health Agencies – Establish/Construct **Exhibit #19**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131281 E	L. Woerner, Inc. d/b/a HCR (Washington County) Ms. Hines - Interest	Contingent Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #20**

	Number	Applicant/Facility	E.P.R.C. Recommendation
	2242-L	Mount View Assisted Living, Inc. (Niagara County) Mr. Booth - Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

Ambulatory Surgery Centers – Establish/Construct **Exhibit #21**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131030 B	Bay Ridge Surgi-Center, LLC (Kings County) One Member Opposed at EPRC	Contingent Approval
2.	131308 B	Great South Bay Endoscopy Center, LLC (Suffolk County) One Member Opposed at EPRC	Contingent Approval

CATEGORY 4: Applications Recommended for Approval with the Following:

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

Acute Care Services – Establish/Construct **Exhibit #22**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132088 E	St. Lawrence Health System, Inc. (St. Lawrence County) Mr. Booth - Interest One Member Opposed at EPRC One Member Abstained at EPRC	Contingent Approval

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

Ambulatory Surgery Centers – Establish/Construct **Exhibit #23**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121373 B	Lockport Ambulatory Surgery, LLC (Niagara County) Mr. Booth - Interest Two Members Abstained at EPRC	Disapproval

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

IX. NEXT MEETING

November 21, 2013 - LATHAM
December 12, 2013 – LATHAM

X. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
August 1, 2013

The meeting of the Public Health and Health Planning Council was held on Thursday, August 1, 2013 at The National Museum of Play at The Strong, One Manhattan Square, Activity Room C and D, Rochester, New York 14607, Vice Chairman, Jeffrey Kraut and Christopher Booth presided.

COUNCIL MEMBERS PRESENT:

Dr. Jodumatt Bhat
Mr. Christopher Booth
Dr. Jo Ivey Boufford
Dr. Lawrence Brown
Mr. Michael Fassler
Dr. Carla Boutin Foster
Dr. Angel Gutiérrez
Dr. Ellen Grant
Mr. Robert Hurlbut
Mr. Jeffrey Kraut
Dr. Glenn Martin
Ms. Ellen Rautenberg
Mr. Peter Robinson
Dr. John Rugge
Dr. Ann Marie Sullivan
Commissioner Shah (ex-officio)

DEPARTMENT OF HEALTH STAFF PRESENT:

Mr. Charles Abel
Mr. Christopher Delker
Ms. Colleen Frost
Ms. Rebecca Fuller Gray
Ms. Sandy Haff - Albany (via phone)
Ms. Sue Kelly
Ms. Sylvia Pirani
Mr. Timothy Shay – Albany (via phone)
Ms. Lisa Thomson

INTRODUCTION:

Mr. Booth called the meeting to order and welcomed Commissioner Shah, Executive Deputy Commissioner Kelly along with Council members, meeting participants and observers.

MEETING OVERVIEW:

Mr. Booth gave a brief overview of the Council meeting agenda. Mr. Booth noted for the record that due to the lack of a quorum that the Adoption of the Minutes would be handled later on the agenda.

<u>REPORT OF DEPARTMENT OF HEALTH ACTIVITIES</u>:

Mr. Booth introduced Commissioner Shah to give the Report on the Department Activities.

<u>Welcome New Member</u>

Dr. Shah began his report by welcoming Dr. Lawrence Brown, Jr. as a member of the Council and expressed that he was delighted to have Dr. Brown join the Council and look forward to his active participation.

<u>Health Benefits Exchange</u>

Dr. Shah stated that on October 1, 2013 American's for the first time will have the chance to purchase affordable health insurance. In July, the Department of Financial services approved health insurance plan rates for 17 insurers seeking to offer coverage on the Exchange. For consumers shopping in the individual market here in New York, premiums for those plans are going to cost on average 53 percent less than they did last year. New York was awarded $27 million in grants to 50 organizations who will use those funds to train navigators and in-person assisters to help consumers shopping on the Exchange.

Dr. Shah noted that the Department is expecting over the next few years to have one million New Yorkers purchase insurance on the Exchange and that includes over 600,000 in the individual market and also almost 450,000 employees of small businesses through the SHOP, the Small Business Health Options for Small Businesses. New York has been recognized nationally for its efforts to create the Exchange and it all began when Governor Cuomo issued an executive order to create the Exchange.

<u>Doctor Across New York</u>

Dr. Shah explained that the Department gave out $2.2 million in awards for the doctors across New York loan repayment program to 16 physicians who in exchange will work in underserved communities with a five year commitment. As well as providing $3 million in practice support awards to help 32 physicians start or join practices in these underserved communities over the next two years. The Division of Workforce Development is getting ready to announce the names of up to 33 full time dentists, dental hygienists, physician assistants, nurse practitioners, family therapists and other health professionals who will receive a total of $1 million in primary care service corp funds for their loan repayment program.

iStop

Dr. Shah announced that the Bureau of Narcotic Enforcement, is making tremendous progress on the iStop initiative, a key element of the Department of Health's aggressive efforts to prevent prescription drug abuse. New York has a long history of tracking prescriptions that date back to 1972, to the Rockefeller era. New York prescribers dispense more than 60.9 million prescriptions for controlled substances in 2010, there were only 308,000 searches done. Nearly 15,000 people die every year from a prescription pain killer overdose. Twelve million people over the age of 12 have used prescription pain killers for non-medical purposes. The CDC has urged states to step up their monitoring of the prescription pain killers actual prescriptions. On June 12, 2013 the Department launched a new prescription monitoring program system ahead of schedule. Due to the passage of the Prescription Drug Reform Act, the State's 96,000 DEA licensed prescribers will be required to check the PMP before prescribing a controlled substance. Doctors will be able to spot addiction related behaviors and patients who are doctor shopping. Doctors will also catch dangerous drug interactions that can happen such as when a patient gets an opioid analgesic from her primary care physician and a benzodiazepine from her psychiatrist.

Telehealth

Dr. Shah stated that the Department has formed an internal executive telehealth workgroup to look at the potential for telehealth to increase access to care in rural and underserved areas and to specialists statewide. The workgroup will develop a set of recommendations that answers a few key questions such as what are the biggest barriers to adopting telehealth, how could they be overcome; what needs to happen next? The workgroup is comprised of three subcommittees looking at reimbursement, technology, and provider related issues such as licensing, malpractice, and liability concerns. A written report will be completed this fall. Department staff is also working with HANYS, CHCANYS, the American College of Physicians, and the School of Public Health's Center for Workforce study at Albany to do a survey on telehealth. The results of the survey will provide an environmental scan of telehealth initiatives statewide and tell us even more about the barriers effecting additional use.

Health Data

Dr. Shah announced that he accepted the first annual data liberation award at Health Data-Palooza on behalf of the Department of Health and the State of New York which was held in Washington D.C. in June. He noted that it was an incredible honor for the State of New York. New York is unlocking data that people own about their healthcare, and have given it back in ways that are meaningful. No other state has done this to this extent, and so federal leaders are asking New York for help. Dr. Shah stated that he has been contacted by governor's offices in California, and has with Texas, Illinois and Louisiana and a few other smaller states, about what New York is doing right.

Pediatric Obesity

Dr. Shah advised that in May the Department released data on student body weight data. The Department has highlighted one of the biggest public health emergencies, pediatric obesity, but just releasing data at the school district level for 680 school districts across the State of New York. He noted that it has been a very launch with more to come in the fall.

SHIN-NY

Dr. Shah explained that the Department has also opened up access to the SHIN-NY, the Statewide Health Information Network-New York which is a layer of data on top of your health information exchange, that allows people to create value for patients in real time. He stated that New Yorker's are going to be able to access their own data securely in real time wherever they are. This data is not just about health, it is also about business opportunities. Today, we have in the State of New York the largest healthcare IT accelerator program in the country, the New York Digital Health Accelerator, a public-private partnership between the New York e-health collaborative, the partnership fund of the, New York City, and the Department of Health, and it is already bearing fruit.

Pediatric Care

Dr. Shah stated the Department in June 2013 accepted the March of Dimes Virginia Apgar Prematurity Campaign Award. In 2009 New York State had a rate of pre-term births of 12 percent. By 2011 we had lowered that rate by over 10 percent, down to 10.9 percent, that alone is one of the biggest achievements in reducing mortality, ultimately, of any other big state in the country, and it was recognized by the March of Dimes. There is still have a long way to go, but focusing on quality and safety in the hospital and other settings has been a Departmental priority and will continue to make progress on pre-term birth in the near future.

Clean Indoor Air Act

Dr. Shah noted that the Department celebrated the tenth anniversary of the Clean Indoor Air Act. A recent study by the Department shows that since that implementation of the Act in 2003 there was a significant reduction in the number of hospitalizations for heart attack. There were 3,800 fewer hospital admissions for heart attacks with an estimated cost savings of $56 million. Smoking remains the leading preventable cause of sickness and death in New Yorkers, one in five people still smoke. Exposure to second hand smoke continues to cause illness in both adults and children. Children are the most vulnerable to the effects of second hand smoke, unless we reduce tobacco use, 389,000 of New York's children who are today under the age of 18 will die someday of a smoking related illness, these numbers are staggering.

Promotion of Community Health and Prevention

Next, Dr. Shah advised that the Department has increased emphasis on prevention. The nonprofit hospital community has been charged recently with developing new improved community prevention initiatives under the Affordable Care Act. The new health model requires hospitals to be promoters of community health and prevention. A recent study in the New England Journal of Medicine found that tax-exempt hospitals which every nonprofit in the State of New York is, spent just 7.5 percent of their operating expenses on community benefits in 2009. Starting this year and every three years after that, hospitals are required to work with local stakeholders and public health experts to develop a community health needs assessment. The Department has been working very closely with HANYS and Greater New York Hospital Association, local public health partners around the prevention agenda to make this a reality

today. And incrementally over time this is going to add up. The Department remains committed to work with hospitals to make that every dollar spent meaningful. The Department has asked hospitals to identify two priorities from the Prevention Agenda and then develop and implement a plan to address them. They have to actively invest in their communities. The Department is very serious about this and plans to recognize hospitals that increase community benefits with an annual award.

Dr. Shah completed his report and asked if members had questions. To review his report, please see pages 3 through 20 of the attached transcript.

Mr. Kraut thanked Dr. Shah for his report. Mr. Kraut welcomed Dr. Brown to the Council and announced that he replaces Ms. Regan on the Council whose membership term has expired.

APPROVAL OF THE MINUTES OF JUNE 6, 2013:

Mr. Kraut asked for a motion to approve the June 6, 2013 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutiérrez motioned for approval which was seconded by Dr. Bhat. The minutes were unanimously adopted. Please refer to page 22 of the attached transcript.

Mr. Kraut advised that in order to maintain a quorum he was going to introduce one CON application for consideration.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS:

Report of the Committee on Establishment and Project Review

Jeffrey Kraut, Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Upstate Request for Applications – Certified Home Health Agencies – Construction **Exhibit #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121239 C	Visiting Nurse Service of Rochester and Monroe County (Monroe County) Mr. Booth – Recusal Ms. Hines – not present at meeting Mr. Robinson - Recusal	Approval

Mr. Kraut introduced application 121239 C and advised that Mr. Booth and Mr. Robinson are recusing and have left the room. Mr. Kraut motioned for approval which was seconded by Ms. Rautenberg. The motion to approve carried with the noted recusals. Please see page 23 and 24 of the attached transcript. Mr. Booth and Mr. Robinson re-entered the meeting room.

Mr. Kraut adjourned the Full Council meeting to adjourn the Special Establishment and Project Review Committee meeting.

Mr. Kraut convened the Full Council meeting after the conclusion of the Establishment and Project Review Committee meeting and introduced Executive Deputy Commissioner Kelly to give a presentation on the NYS e-FINDS.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES:

Report of the Executive Deputy Commissioner

Ms. Kelly described e-FINDS, evacuation of facilities in natural disasters systems. The system has been designed as the patient and health facility resident tracking and locating system during emergency evacuations. During Hurricane Sandy nearly 8000 patients and facility residents were evacuated from nine hospitals, 25 nursing homes, and 22 adult care facilities in New York City, Long Island, and the lower Hudson Valley. The year before 10,000 patients and health facility residents were evacuated during Hurricane Irene and remarkably were quickly repatriated. An imperative consensus among providers and government officials was that New York State must quickly acquire the tools to assist providers in tracking and locating patients during evacuations. During Sandy, some facilities were uncertain about where their patients and residents were sent. Receiving facilities did not always know where people came from. During Sandy we were unable to track patients and the status of their condition. Families had no knowledge of where their loved ones were sent. Many residents were sent without adequate health records, without medication information. E-FINDS is not the final solution, it is the first step towards a solution.

Ms. Kelly stated that using the health commerce system in which providers already have accounts, has established a common platform for sharing patient and resident information. It is a simple, secure, universally accessible functioning patient tracking system. This system allows for data entry through barcode scanners or direct data entry as well as paper-based transmission. It gives that State and its partners real time access to the data.

Ms. Kelly noted that the Department is currently in the process of providing all facilities with barcoded wristbands preprinted with each facilities name, scanning equipment, and we're in the process of providing training. The Department has become kind of a business operation this summer in the Health Department and procured the materials by taking large barcoding printers to barcode and then print the names of the facilities and servicing over 2500 providers.

Ms. Kelly stated that an App for mobile devices was developed and is currently being tested by information technology services staff. Training is being provided by the Health Commerce Institute staff through regional training centers. The Department has coordinated with provider associations and will hosted an a webinar, web-x posted to the Health Commerce system. The program actually takes about an hour, but providers could either come to the training program or get on a call to participate, the Department also wanted to afford providers the ability to have staff within the facility with the equipment in hand go through the training program and repeat it, or scroll through it as needed.

Ms. Kelly advised that accessing EFINDS is role-related. Each provider participates on the Health Commerce system which has been used by the State to communicate with providers. The Department has identified certain roles within each facilities, within each facility, so there's an EFINDS data reporter or reporters whose job it is to enter information through the barcoding scanners, and provided each facility with packages with paperwork associated with each unique barcode so that information could be entered by hand if there's a problem with internet access or power there may be the inability or need for people to move quickly to implement.

Ms. Kelly explained that the Department is also going to provide access to local health departments, State Health Department regional offices. She further noted that if health evacuation centers have to be set up in other counties, health association personnel may be there or local health department personnel and will also have access to the system. A facility could on its own, voluntarily activate the system and begin the process of scanning information on patients and residents, getting the wristbands on people. However, if there were a regional evacuation, then the State Health Department would notify the health facilities, because the State, the Health Commissioner assumes the role as director of the health evacuation center anywhere in the State, and we would be following the training that has been provided to facility staff, following the protocol that they have been trained on and have the opportunity to drill.

Ms. Kelly noted that a drill that took place in July 2013. The Department met with New York City Health Department, and New York City Office of Emergency Management (OEM) with both the City and State health commissioners as well as the commissioner for city OEM. There was a scenario where there was a hurricane pointed in the direction of New York City and affecting certain hurricane zones in New York City, and they were assessing what needed to be done 96 hours out, 72 hours out, 48 hours out. During that process they would be predicting an evacuation in certain zones, always subject to change because the weather is

changeable, they would begin the process of a preplanned evacuation, and we have gathered surveys information from providers about their send, receive, relationships, their capability to shelter in place if needed, but we also know there can be events that which there's no 72 hour lead time so that we're playing out scenarios with providers, staff about situations where there's internet access, where there is no access, where the scanners are working or they're not working, but really trying to have a simple system that would require that people would at least have fundamental information, not only about the sending facility but entering the first name, last name, date of birth at a minimum, entered into the system through the keyboard emulating scanners or through handwritten entries into the paperwork. The system enables the facility to identify whether the patient or resident is sheltering in place, whether the person is being transferred and what the destination is. The receiving facility then would change the location of the specific patient or resident and update the information about where they are. They are able to do that multiple times for multiple locations because we know people were moved multiple times during Sandy. There could be a no notice evacuation, as I mentioned, where a facility really has to move quickly and if time permits, we certainly want people to get the bands on. We had a test recently at Kings County Medical Center in association with University at Hospital of Brooklyn and the lead for emergency preparedness said it took about 18 seconds to enter the information on each patient following the rubric that we identified. So that was pretty good, and that was just the first test of the system. The Department is going to recommend that facilities get the training, revisit the training, plan drills where the state and localities are willing to work with the facilities to plan training and drills.

Ms. Kelly described that the Department is working with the State O agencies, since it works with over 2500 providers from different types of facilities such as hospitals, nursing homes, adult care facilities, Office for Children and Family Services, Juvenile Justice Center, OASAS, the Office of Alcoholism and Substance Abuse Services, residential treatment programs, Office for People with Developmental Disabilities, the developmental centers as well as some residential programs, Office of Mental Health, state hospitals as well as licensed housing settings, and then supportive housing sites. Ms. Kelly concluded that the Department is compelled to have something in place before the hurricane season hits the east coast and the north east.

Ms. Kelly concluded her report. Mr. Kraut thanked Ms. Kelly and asked if members have questions or comments. To see a more detailed presentation and comments from Council members, please see pages 26 through 40 of the attached transcript.

Mr. Kraut congratulated Dr. Sullivan on her nomination and new role to serve as the Acting Commissioner of the Office of Mental Health.

Mr. Kraut then introduced Ms. Westervelt who was participating via phone to give the Report of the Activities of the Offices of Primary Care and Health Systems Management.

Report of the Activities of the Offices of Primary Care and Health Systems Management

Ms. Westervelt began by congratulation Dr. Sullivan for her upcoming appointment as Acting Commissioner of the Office of Mental Health and welcomed Dr. Brown to the Council.

Ms. Westervelt explained the Department is in the process have issuing a competitive application process in the very near future for assisted living program beds and under the State budget process for this year 2013-14 Social Services Law was amended that authorized the Commissioner to establish up to 4,500 new assisted living program beds, and the amendment to the law limits applicants to transitional adult homes, and these are adult homes with a certified capacity of 80 beds or more in which 25 percent or more of the residents are persons with serious mental illness. Currently there are 16 transitional adult homes that have existing out beds and expect a large cohort of the conditional homes to submit applications for this competitive process as well. There are 49 conditional homes to submit applications for this competitive process as well and 49 transitional adult homes in New York State which are eligible to apply. That number is expected to change as providers are taking the necessary steps outlined in their mandatory compliance plans to reduce the number of persons with serious mental health illness in their homes proportionately anyway. The Department expects that the majority of transitional homes will apply for some complement of these beds. This initiative new construction projects will not be eligible for reimbursement for construction costs meaning that no transitional adult homes can apply for beds above and beyond their existing licensed capacity. However, reimbursement is available for those transitional adult homes proposed to convert to 100 percent assisted living beds. Capital construction costs for approved out projects will be limited to necessary certified costs and will not exceed 25 percent of the applicable RHCF bed cap for their specific region. For the purposes of this initiative applicants will need to provide information that describes how their proposed out application will foster a community-like atmosphere that increases independence through the development of independent living skills, adherence to resident choice and services and support, allowing residents to exercise control over their schedule and activities and environmental and operational considerations which foster an atmosphere of independence and community living similar to enriched housing programs.

Ms. Westervelt stated that the Department is expecting that all applications will need to be received by the Department by 4 p.m., on September 30, 2013 and will be reviewed on a non-comparative basis as noted in the legislation. Questions regarding this initiative will be accepted through August 14, 2013 and responses will be posted to the Department's website by August 28, 2013 and interested applicants for these beds must attest that they have a valid license as a LHHCSA or certificate of approval as a CHHA. Approval letters will be forwarded to those applicants who are selected to proceed to the next phase which will be a CON submission. Several questions have been received from non-transitional adult home providers seeking information on the timing of the next round of out beds to be offered. Currently the Department is actively planning for the release of the remaining, 3,000 plus out beds. This is part of an original 6,000 bed project and the Department is planning on releasing a solicitation for the remaining slots in early October of this year, which is consistent with the existing legislation requiring that all out beds be offered by March 31, 2014.

Ms. Westervelt concluded her report. Mr. Kraut thanked Ms. Westervelt. To see the complete report, please see pages 40 through 45 of the attached transcript.

Mr. Kraut moved to the next agenda item and introduced Dr. Boufford to give the Report on the Committee on Public Health.

PUBLIC HEALTH SERVICES

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

Report on the Activities of the Committee on Public Health

Dr. Boufford thanked Ms. Rautenberg for chairing the July 18th Public Health Committee. Early in 2013 the Commissioner sent out guidance to hospitals and local health departments that they were asked to really fulfill their mutual responsibilities for community needs assessment, community benefit reporting on the hospital side, and community health plans on the local health department side, together and asked to include other stakeholders in local alliances. In that process there was a multi-step process setting priorities identifying their plans and identifying the metrics they would be using to measure their progress. There were some additional funds from the Robert Wood Johnson Foundation which allowed the development of a communication plan for getting information out to the local communities and the small grants program for five rate providers of regional technical support to local communities, and the LIJ North Shore volunteered to provide that support pro-bono for the Nassau-Suffolk County region. Recently Commissioner Farley had approached the Greater New York Hospital Association. There was a meeting where Dr. Patsy Yang represented the New York City Health Department in conversations with collected community relations representatives of the New York State hospitals to talk about the particular priority areas in Take Care New York which overlapped with the prevention agenda with which the City Health Department could work in partnership with those hospitals that wish to engage on those issues.

Dr. Boufford noted that a monthly update is being requested from each of the local health departments and the latest July update showed that 52 out of 54 responded; 19 are in their priority setting stage. The 44 hospitals are members of the coalitions. Out of the 44 hospitals indicated that community-based organizations are at the table, 41 involving other agencies of government, 27 with schools, 21 involving academic and business, and 10 have health plans as part of their coalition. Thirty-seven have not yet set their priorities but those that have, the top two selected are preventing chronic disease, especially cardiovascular disease and diabetes, with associated obesity, and the second most population, most prevalent is promoting mental health and promoting substance abuse.

Dr. Boufford noted that reports are due in November, and the Committee continues to work with the Department and with several foundations around the State, to generate a small grants opportunity for those communities when they submit their plans in November to have funding possibilities and hopefully leverage some additional funding for the regional resource providing organizations, pending what we hope will be resources that link it up to the RHIC activity down the road with the waivers and the SIM grant that's pending.

Dr. Boufford stated that the last Public Health Committee meeting had representatives from Steuben, Allegheny, Yates Rural Health Network, public health director from Ontario County, and representation from the P2 Collaborative and the public health educator from Orleans County Health Department and they all discussed really their progress and interaction with one another.

Dr. Boufford concluded her report and members of the Council offered comments. To see the complete report, please see pages 45 through 53 of the transcript.

Mr. Kraut thanked Dr. Boufford for her report and introduced Dr. Rugge to give an update on the Committee on Health Planning.

HEALTH POLICY

Report of the Activities of the Committee on Health Planning

Dr. Rugge noted that the Health Planning Committee is engaged with taking a fresh look at ambulatory services and regulations. Events on the ground have overtaken structures that were put in place 40 and 50 years ago with physician groups developing some high tech, high end services that would have once been considered institutional, and as a further dimension you look at the need to develop a full spectrum of categories of ambulatory services suitable for fitting every different communities needs across the State. To that end we began with two meetings, one dedicated to understand the perspective of the providers, stakeholders. In May there was a meeting with presentations and discussion with the payer community. In July, the Committee met to consider the first series of option papers that have been prepared by Department staff. Under consideration were high end imaging, radiation therapy, ambulatory surgery centers, office-based surgery, and urgent care. With regard to the first four of those five, the Committee was looking at narrowing the options as we come back to reconsider having slept on the possibilities, as we look at how that fits into the discussions of yet other categories still to come.

Dr. Rugge stated that the most interesting discussion during the meeting was regarding urgent care and realizing how many different roles urgent care plays and different communities and micro environments across the State. It seems that urgent care really is providing a safety valve in terms of sparing ER usage in other communities, To the west, it would appear that urgent care centers are replacing or displacing primary care. It means taking another and deeper look at that in the light of yet other service categories.

Dr. Rugge gave an overview of upcoming meetings, in September, there will be consideration of upgraded D&T centers, retail clinics, freestanding EDs, with consideration as well as telehealth in those contexts and the following month with a discussion of the so-called mega physician groups which really is an aggregation of all those various services and will entail, again, a new look at 10 NYCRR Section 600.8 in terms of what indeed is considered institutional and what is considered "private." Dr. Rugge stated that is the Committee's goal that in the month of November the Committee will be prepared to come to consensus and come to vote in time for the December meeting for the Council for consideration and adoption of recommendations.

Dr. Rugge concluded his report. Please see pages 53 through 57 of the attached transcript to view the complete report.

Mr. Kraut asked Dr. Gutiérrez to give the Report of the Committee on Codes, Regulations and Legislation.

REGULATION

Report of the Committee on Codes, Regulations and Legislation

For Emergency Adoption

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

Dr. Gutiérrez began his report by introducing 13-08 Amendment of Subpart 7-2 of Title 10 NYCRR - Children's Camps for Emergency Adoption. Dr. Gutiérrez briefly described the regulation and motioned for emergency adoption. Mr. Fassler seconded the motion. The regulation passed with an abstention. Please see pages 57 through 59 of the attached transcript.

Mr. Kraut thanked Dr. Gutiérrez for his report and moved to the next agenda item the Report of the Establishment and Project Review Committee and introduced Mr. Booth to give the report.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

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

	Number	Applicant/Facility	Council Action
1.	131217 C	Saratoga Hospital (Saratoga County)	Contingent Approval

Mr. Booth briefly described application 131217 and motioned for approval which was seconded by Mr. Fassler. The motion to approve passed. Please see pages 59 and 60 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Hospice Services – Construction **Exhibit #5**

	Number	Applicant/Facility	Council Action
1.	131211 C	High Peaks Hospice and Palliative Care, Inc. (Franklin County) Mr. Booth – Interest Dr. Rugge - Interest	Approval

Mr. Booth introduced application 131211 and noted for the record that Mr. Booth and Dr. Rugge have declared an interest. Mr. Booth motioned for approval. Mr. Fassler seconded the motion. The motion to approve carried. Please see pages 60 and 61 of the attached transcript.

	Number	Applicant/Facility	Council Action
2.	131252 C	The Community Hospice Inc. (Rensselaer County) Dr. Rugge - Interest	Approval

Mr. Booth introduced application 131252 and noted Dr. Rugge's interest. Mr. Booth motioned for approval which was seconded by Dr. Bhat. The motion to approve carried. See page 61 of the attached transcript.

Upstate Request for Applications – Certified Home Health Agencies – Construction **Exhibit #3**

	Number	Applicant/Facility	Council Action
1.	121245 C	Lourdes at Home (Broome County) Mr. Booth - Interest	Approval

Mr. Booth described application 121245 and noted for the record he has an interest. Mr. Booth motioned for approval which was seconded by Dr. Martin. The motion carried. Please see pages 61 and 62 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

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

	Number	Applicant/Facility	Council Action
1.	121327 C	Hebrew Hospital Home LTHHCP (Bronx County) Ms. Hines – Abstained at EPRC not present at Full Council Meeting	Approval

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

	Number	Applicant/Facility	Council Action
1.	121457 C	Split Rock Rehabilitation and Health Care Center (Bronx County) Ms. Hines – Abstained at EPRC not present at Full Council Meeting	Approval

Mr. Booth introduced applications 121327 and 121457 and motioned for approval which was seconded by Dr. Martin. The motion to approve both applications passed. Please see page 62 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

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

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

Residential Health Care Facilities – Establish/Construct **Exhibit #10**

	Number	Applicant/Facility	Council Action
1.	122219 E	Cardiff Bay Center, LLC d/b/a Cardiff Bay Center for Rehabilitation and Nursing (Queens County)	Contingent Approval
2.	131020 E	Providence Care, Inc. d/b/a Providence Care Nursing and Rehabilitation Center (Kings County)	Contingent Approval
3.	131153 E	Oasis Rehabilitation and Nursing LLC (Suffolk County)	Contingent Approval

Certificate of Incorporation **Exhibit #11**

Applicant	Council Action
Valentin Fuster – Mount Sinai Foundation for Science, Health and Empowerment, Inc.	Approval

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

Applicant	Council Action
Planned Parenthood of South Central New York, Inc.	Approval
SS Joachim & Anne Residence	Approval

Certificate of Dissolution **Exhibit #13**

Applicant	Council Action
St. Camillus Foundation, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #14**

Number	Applicant/Facility	Council Action
2056-L	3 Angels Care, Inc. (Queens and Nassau Counties)	Contingent Approval
1929-L	Allstar Homecare Agency, Inc. New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)	Contingent Approval
1967-L	DBN Partners, Inc. d/b/a Always Best Care of Lower Hudson Valley (Orange and Rockland Counties)	Contingent Approval
2057-L	Entire Care, Inc. (Kings, Westchester, Queens, Bronx, New York, and Richmond Counties)	Contingent Approval
2170-L	F.A.B., LLC d/b/a F.A.B. Home Care Services (Kings, Richmond, Queens, Bronx, and New York Counties)	Contingent Approval

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

Mr. Booth described all applications in Category One and motioned for approval. The motion was seconded by Dr. Gutiérrez. The motion to approve all applications in Establish/Construct in Category carried. Please see pages 61 through 66 of the attached transcript.

A. <u>APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES</u>

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

CON Applications

Acute Care Services – Construction **Exhibit #4**

	Number	Applicant/Facility	Council Action
1.	131207 C	Long Island Jewish Medical Center (Queens County) Mr. Kraut – Recusal Dr. Sullivan – Abstain/Interest	Contingent Approval

Mr. Booth called application 131207-C and noted for the record that Mr. Kraut has a conflict and has left the meeting room. Mr. Booth described the application and motioned for approval which was seconded Dr. Martin. The motion to approve carried with Mr. Kraut's noted recusal and Dr. Sullivan's abstention. Please see page 71 of the transcript. Mr. Kraut returned to the meeting room.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

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

	Number	Applicant/Facility	Council Action
1.	131026 B	Central New York ASC, LLC d/b/a OMNI Outpatient Surgery Center (Oneida County) Mr. Booth - Interest	Contingent Approval
	131085 E	Heritage One Day Surgery (Onondaga County) Mr. Booth - Interest	Contingent Approval

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

	Number	Applicant/Facility	Council Action
1.	122304 E	First To Care Home Care Inc (Kings County) Mr. Fassler - Interest	Contingent Approval

Mr. Booth described applications 131026 and 131085, noted for the record he has an interest and described application 122304 and noted that Mr. Fassler has interest. Mr. Both motioned for approval which was seconded by Dr. Gutiérrez. The motioned carried. Please see pages 71 and 72 of the attached transcript.

HOME HEALTH AGENCY LICENSURES **Exhibit #17**

Number	Applicant/Facility	Council Action
2047-L	AIM Services, Inc. (Albany, Warren, Schenectady, Washington, Rensselaer, Fulton, Saratoga and Montgomery Counties) Dr. Rugge - Recusal	Contingent Approval

Mr. Booth moved to application 2047 L and noted for the record that Dr. Rugge has a conflict and has left the meeting room. Mr. Booth motioned to approve which was seconded by Dr. Gutiérrez. The motion to approve carried with Dr. Rugge's noted recusal. Dr. Rugge returned to the meeting room. Please see page 2253 L and motioned for approval which was seconded by 72 and 73 of the attached transcript.

HOME HEALTH AGENCY LICENSURES **Exhibit #17**

Number	Applicant/Facility	Council Action
2253-L	Home Aides of Central New York, Inc. (Onondaga, Cortland, Oswego, Oneida, Madison and Cayuga Counties) Mr. Booth - Interest	Contingent Approval

Mr. Booth moved to application 2253 L, noted for the record he has an interest and motioned for approval which was seconded by Dr. Gutiérrez. The motion to approve carried. Please see page 73 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

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

	Number	Applicant/Facility	Council Action
1.	121273 E	Elant Choice, Inc. (Orange County) Ms. Hines – Abstained at EPRC not present the Full Council Meeting	Contingent Approval

Mr. Booth described application 121273 and motioned for approval. Dr. Gutiérrez seconded the motion to approve. The motion carried. Please see pages 73 and 74 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

Ambulatory Surgery Centers – Establish/Construct **Exhibit #19**

	Number	Applicant/Facility	Council Action
1.	121373 B	Lockport Ambulatory Surgery, LLC (Niagara County) Mr. Booth - Interest Dr. Brown – Abstained Dr. Grant – Abstained	Deferred

Mr. Booth introduced application 121373 and noted he has an interest. Mr. Booth motioned for disapproval which was seconded by Dr. Gutiérrez. The motion to disapprove failed. A new motion for deferral was made by Dr. Bhat and passed with 2 members abstaining. To see the member's lengthy discussion, please see pages 74 through 92 of the attached transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

Applications

HOME HEALTH AGENCY LICENSURES **Exhibit #20**

Number	Applicant/Facility	Council Action
2054-L	Renaissance Health Services, Inc. d/b/a Lagora Health Service (Kings, Nassau, Queens, Bronx, New York, and Richmond Counties)	Deferred at the Department's Request
2083-L	Parkshore Home Health Care, LLC d/b/a Renaissance Home Health Care (Kings, Bronx, Queens, Richmond, New York and Nassau Counties) Mr. Fassler - Interest	Contingent Approval

Mr. Booth noted for the record that application 2054 L has been deferred at the Department's request. He then introduced application 2083 L, noted for the record that Mr. Fassler has an interest. Mr. Booth motioned approval which was seconded by Dr. Gutiérrez. The motion carried. Please see page 93 of the attached transcript.

ADJOURNMENT:

Mr. Kraut thanked Mr. Booth for his report. Hearing not further business of the Council adjourned the meeting.

1 CHRIS BOOTH: Good morning everybody. I'd like to call
2 the meeting to order. My name is Chris Booth. Sitting in, I
3 have the privilege to call to order the meeting of the Public
4 Health and Health Planning Council, and welcome members,
5 Commissioner Shah, Executive Deputy Commissioner Kelly,
6 participants and observers. I would like to remind Council
7 members, staff, and the audience that this meeting is subject to
8 the open meetings law and is broadcast over the internet. The
9 webcasts are accessed at the Department of Health's website.
10 The on-demand website will be available no later than seven days
11 after the meeting for a minimum of 30 days and then a copy will
12 be retained in the Department for four months.
13 There are some suggestions or ground rules to follow to
14 make this successful. Because there is synchronized captioning,
15 it is important that people do not talk over each other.
16 Captioning cannot be done correctly with two people speaking at
17 the same time. The first time you speak state your name and
18 briefly identify yourself as a council member or Department
19 staff. This will be of assistance to the broadcasting company
20 to record this meeting. Please note that microphones are hot,
21 meaning they pick up every sound. I therefore ask you to avoid
22 rustling of papers next to the microphone and also to be
23 sensitive about personal conversations or sidebars as the
24 microphones will pick up this chatter.

1 As a reminder for our audience, there is a form that needs
2 to be filled out before you enter the meeting room which records
3 your attendance at this meeting. It is required by the Joint
4 Commission on Public Ethics I accordance with executive law
5 section 166. The form is also posted on the Department of
6 Health's website under Certificate of Need. So in the future
7 you can fill out the form prior to council meetings. Thank you
8 for your cooperation in fulfilling our duties as prescribed by
9 law.
10 Today's meeting; do want to make a mention on the Public
11 Health and Health Planning Council agenda when we get to it on
12 conflicts, members of the Council and most of our guests who
13 regularly attend the meetings are now familiar with the
14 reorganization of the agenda by topics or categories which
15 captures the roles and responsibilities of the Council. The
16 reorganization needs – the reorganization includes the batching
17 of Certificate of Need applications. I hope you have taken the
18 time to review the batched applications and have thought about
19 whether you would like a project moved to a different category.
20 If so, you should indicate.
21 The first item of business is adoption of the minutes,
22 which we can't do because we don't have a quorum, so we'll come
23 back to that as well, and we'll start off with a report from
24 Commissioner Shah. Welcome.
25

1 NIRAV SHAH: Thank you Mr. Booth.
2 Good morning everyone. I'd like to start by welcoming our
3 newest board member, Dr. Lawrence Brown, Jr. Dr. Brown is the
4 Executive Director of the Addiction Research and Treatment
5 Corporation in Brooklyn. He's a board member of the College on
6 Problems of Drug Dependence and a clinical professor of public
7 health at Cornell University. He received his medical degree
8 from NYU and his MPH from Columbia University. He has served on
9 numerous governmental committees for the FDA, the National
10 Institute on Drug Abuse, and the National Institute on Allergy
11 and Infectious Disease. We're delighted to have him join us and
12 look forward to his active participation.
13 A new era of healthcare is dawning in New York State and in
14 the rest of the Country. On October 1, Americans who have
15 existed without the safety net of health insurance who live in
16 fear that a single catastrophic medical crisis will land them I
17 bankruptcy, will, for the first time have the chance to purchase
18 affordable health insurance. As of today we are officially two
19 months away from opening our health benefits exchange which has
20 been making big news throughout the country. In July, the
21 Exchange made big news I two important ways. First, the
22 Department of Financial services approved health insurance plan
23 rates for 17 insurers seeking to offer coverage on the Exchange.
24 For consumers shopping in the individual market here in New
25 York, premiums for those plans are going to cost on average 53

1 percent less than they did last year. Second, we awarded $27
2 million in grants to 50 organizations who will use those funds
3 to train navigators and in-person assisters to help consumers
4 shopping on the Exchange. We're expecting over the next few
5 years to have one million New Yorkers purchase insurance on the
6 Exchange and that includes over 600,000 in the individual market
7 and also almost 450,000 employees of small businesses through
8 the SHOP, the Small Business Health Options for Small
9 Businesses. New York has been recognized nationally for it's
10 efforts to create the Exchange and it all began when Governor
11 Cuomo issued an executive order to create the Exchange, and the
12 Exchange is a complicated term for what is really just a
13 marketplace for affordable, high quality health insurance.
14 With two months to go we're about to launch a major
15 statewide campaign to build awareness about the Exchange before
16 open enrollment begins on October 1. So the groundwork has been
17 laid, and soon New Yorkers will be able to go online and
18 purchase health insurance on this marketplace. Coverage will
19 being January 1 of 2014. But unfortunately all the health
20 insurance in the world isn't going to help if we don't have the
21 workforce to provide healthcare.
22 So, just this week we started sowing the seeds for a new
23 crop of doctors in the state's most underserved communities. We
24 gave out $2.2 million in awards for the doctors across New York
25 loan repayment program to 16 physicians who in exchange will

1 work in underserved communities with a five year commitment. We
2 also provided $3 million in practice support awards to help 32
3 physicians start or join practices in these underserved
4 communities over the next two years. And our division of
5 workforce development is getting ready to announce the names of
6 up to 33 full time dentists, dental hygienists, physician
7 assistants, nurse practitioners, family therapists and other
8 health professionals who will receive a total of $1 million in
9 primary care service corp funds for their loan repayment
10 program.
11 Meanwhile, at the Bureau of Narcotic Enforcement, we're
12 making tremendous progress on the iStop initiative, a key
13 element of the Department of Health's aggressive efforts to
14 prevent prescription drug abuse. New York has a long history of
15 tracking prescriptions that date back to 1972, to the
16 Rockefeller era. But we didn't launch the online prescription
17 monitoring program until 2010. This program has been
18 underutilized. Although the State's prescribers dispense more
19 than 60.9 million prescriptions for controlled substances in
20 2010, there were only 308,000 searches done. As you know,
21 prescription drug abuse has reached epidemic proportions across
22 this country. Nearly 15,000 people die every year from a
23 prescription pain killer overdose. Twelve million people over
24 the age of 12 have used prescription pain killers for non-
25 medical purposes. The CDC has urged states to step up their

1 monitoring of the prescription pain killers actual
2 prescriptions. And with iStop Governor Cuomo is doing just
3 that. On June 12 we launched a new prescription monitoring
4 program system ahead of schedule. This is supposed to go online
5 August 27, and under budget. Thanks to the passage of the
6 prescription drug reform act, the State's 96,000 DEA licensed
7 prescribers will be required to check the PMP before prescribing
8 a controlled substance. Doctors will be able to spot addiction
9 related behaviors and patients who are doctor shopping. They'll
10 also catch dangerous drug interactions that can happen such as
11 when a patient gets an opioid analgesic from her primary care
12 physician and a benzodiazepine from her psychiatrist. In the
13 first month alone we've already had 75,000 searches on this new
14 program.
15 On another front, we've formed an internal executive
16 telehealth workgroup to look at the potential for telehealth to
17 increase access to care in rural and underserved areas and to
18 specialists statewide. The workgroup will develop a set of
19 recommendations that answers a few key questions. What are the
20 biggest barriers to adopting telehealth? How could they be
21 overcome? What needs to happen next? The workgroup is
22 comprised of three subcommittees looking at reimbursement,
23 technology, and provider related issues such as licensing,
24 malpractice, and liability concerns. A written report will be
25 completed this fall. Our staff is also working with HANYS,

1 CHCANYS, the American College of Physicians, and the School of
2 Public Health's Center for Workforce study at Albany to do a
3 survey on telehealth. We want to know who offers telehealth,
4 where it is, and how it's being used. The results of the survey
5 will provide an environmental scan of telehealth initiatives
6 statewide and tell us even more about the barriers effecting
7 additional use.
8 As some of you may recall, the June meeting was cut short
9 by a fire drill, which means I wasn't able to share some of the
10 exciting news from the Spring. And so there's some big news
11 that I want to share, including big news on big data which
12 received great media attention with a feature in Newsday just
13 this past week. I accepted the first annual data liberation
14 award at Health Data-palooza on behalf of the Department of
15 Health and the State of New York which was held in Washington
16 D.C. in June, and this is an annual conference, national
17 conference about liberating health data. It was an incredible
18 honor for the State of New York, and I will quote this,
19 "outstanding accomplishments making health data publicly
20 available and facilitating the datas use in apps, tools and
21 services that bring the data to life in meaningful and
22 innovative ways." Now, what does that actually mean? That
23 means that we are unlocking data that people own. It's your
24 data about your healthcare, and we're giving it back to you in
25 ways that are meaningful. No other state has done this to this

1 extent, and so federal leaders are asking New York for help, and
2 to date, I've been contacted by governor's offices in
3 California, and I've met with them, Texas, and Illinois and
4 Louisiana and a few other smaller states, about what New York is
5 doing right and how they can do some of the same things.
6 This is important. So what kind of information is out
7 there today? If you go to our website today, which is
8 healthdata.ny.gov you can find out a lot. Before you go to your
9 favorite restaurant you can see if there are any health
10 violations and YELP.com has agreed to take all that data and put
11 it in their restaurant rankings. You can see whether a hospital
12 has a bad record for hospital acquired infections. Or a nursing
13 home has a bed for your loved one. Before you do any of those
14 choices, make those choices, check out our website. And this is
15 just the start. In May we released data on student body weight
16 data. A dataset that has generated significant media interest.
17 This is a win-win. We've highlighted one of the biggest public
18 health emergencies, pediatric obesity, but just releasing data
19 at the school district level for 680 school districts across the
20 State of New York, so you can go online and see that this school
21 district has a 25 percent pediatric obesity rate. Across the
22 street it's 45 percent. And then you can start asking other
23 questions on why and what are we going to do about it. And it's
24 been a very successful launch, and I promise you there will be a
25 lot more to come this fall. We've also opened up access to

1 something called the SHIN-NY, the Statewide Health Information
2 Network-New York. And what this allows us to do, this is a
3 layer of data on top of your health information exchange, that
4 allows folks to create value for patients in real time.
5 Developers, the next Silicon Valley will be in New York State,
6 building companies off of this data, this clinical data that’s
7 highly protected but it’s in real time. And I’ll give you a
8 very real example. You know, this is clinical data from
9 hospitals, from physician practices, from long term providers,
10 all available on a single, very secure network, to allow
11 consumers to engage in their own care. To promote self-care.
12 This spring over 100,000 New Yorkers voted on the kinds of
13 patient portals they want off of this SHIN-NY data. That means
14 you’re going to be able to access your own data securely in real
15 time wherever you are. So if you’re in Florida you can get
16 access to your data if you need it, and share it with your
17 healthcare providers. You’ll know your numbers. You’ll know
18 what your blood pressure is. You’ll know what your cholesterol
19 is your last blood pressure reading, the medications and doses,
20 all of that available for you at your fingertips. But it’s not
21 just about health. It’s also about business opportunities.
22 Today, we have in the State of New York the largest healthcare
23 IT accelerator program in the country, the New York Digital
24 Health Accelerator. Now, what is that? It’s a public-private
25 partnership between the New York e-health collaborative, the

1 partnership fund of the, New York City, and the Department of
2 Health, and it's already bearing fruit. You know, it isn't easy
3 for those apt developers to get into hospitals and meet with
4 senior level hospital executives, and you don't find too many
5 hospital executives sipping coffee at Starbuck's with
6 entrepreneurial coders. This accelerator brought them
7 altogether. It paired up those technology gurus with the
8 decision makers in healthcare, and for nine months this
9 accelerator acted as an incubator for eight companies that were
10 chosen from among 250 companies that were applying from around
11 the world to be in this group, this elite group. About $4.2
12 million in funding was secured from eight strategic investors,
13 and we got mentorship from 23 provider organizations in the
14 State of New York. Organizations that represent stakeholders
15 from across the continuum of care, including hospitals, nursing
16 homes, federally qualified health centers and private practices.
17 And the results have been, frankly, astounding. Among the 23
18 provider organizations that have provided mentorship, 17 real
19 projects have been launched. These are apps, and software, and
20 products that are I use I our hospitals and federally qualified
21 health centers and elsewhere. And among the eight companies
22 chosen to be I the accelerator, new technology has emerged that
23 includes software that supports team-based medication management
24 and reconciliation for high risk patients. You can have an iPad
25 that shows prescriptions from the hospital, prescriptions from

1 the primary care doc, and what’s there from the pharmacy in real
2 time, live, so someone can reconcile them. That is going to
3 prevent readmissions. We have a referral platform for hospitals
4 discharging patients to help them connect with post-acute care
5 in meaningful real time. We have another app that enables
6 physicians to improve care coordination by using text messaging.
7 Over the next five years, this program alone to date is going to
8 create 1500 jobs in the State of New York, and generate $150 to
9 $200 million I additional venture capital investment which will
10 spur further innovation and health IT. You know, data is the
11 next great natural resource. And in health we’ve been slow to
12 embrace it relative to just about every industry. We are light-
13 years ahead in the State of New York compared to every other
14 state, and we are not stopping there. We are going to have
15 hack-a-thons and code-a-thons in the fall for folks to use this
16 data in partnership with the New York State Health Foundation
17 and others, to think creatively about how to bring value to
18 every New Yorker.
19 We’ve been recognized in this area, but we’ve been
20 recognized in some other areas. In June I was delighted to
21 accept the March of Dimes Virginia Apgar Prematurity Campaign
22 Award. You know, back in 2009 New York State had a rate of pre-
23 term births of 12 percent. By 2011 we had lowered that rate by
24 over 10 percent, down to 10.9 percent. And that alone is one of
25 the biggest achievements in reducing mortality, ultimately, of

1 any other big state in the country, and it was recognized by the
2 March of Dimes. We still have a long way to go, but focusing on
3 quality and safety in the hospital and other settings has been a
4 Departmental priority. We will continue to make progress on
5 pre-term birth in the near future.
6 Another thing that we celebrated recently, which you may
7 have missed is the tenth anniversary of the Clean Indoor Air
8 Act. I don't know if you remember, it was just a decade ago
9 that you would step off a cross country flight or you would come
10 out of a restaurant with a hacking cough from second hand smoke.
11 And a recent study by the Department of Health shows that since
12 that implementation of the Act inn 2003 we've even reduced the
13 number of hospitalizations for heart attack significantly. It's
14 not just that your hair is not smelling anymore, we're saving
15 lives by the Clean Indoor Air Act. There were 3800 fewer
16 hospital admissions for heart attacks with an estimated cost
17 savings of $56 million. Heart attacks is one statistic, it's
18 multifactorial. But we absolutely know that across the board if
19 you look at health, the clean indoor air act has been a game
20 changer for public health, and has been a model for how to
21 improve population health across the board. Yet we can't rest
22 on our laurels. Smoking remains the leading preventable cause
23 of sickness and death in New Yorkers, and I the rest of the
24 country. One in five people still smoke. Exposure to second
25 hand smoke continues to cause illness in both adults and

1 children. In fact, children are the most vulnerable to the
2 effects of second hand smoke. And unless we reduce tobacco use,
3 389,000 of New York's children who are today under the age of 18
4 will die someday of a smoking related illness. These numbers
5 are staggering and they're real. So our increased emphasis on
6 prevention is shaking up the way everyone is doing business
7 including hospitals. The nonprofit hospital community has been
8 charged recently with developing new improved community
9 prevention initiatives under the Affordable Care Act. You know,
10 most people think of hospitals as places you go to treat
11 illness, but the new health model requires hospitals to be
12 promoters of community health and prevention. A recent study in
13 the New England Journal of Medicine found that tax-exempt
14 hospitals which every nonprofit in the State of New York is,
15 spent just 7.5 percent of their operating expenses on community
16 benefits in 2009. No more. Starting this year and every three
17 years after that, hospitals are required to work with local
18 stakeholders and public health experts to develop a community
19 health needs assessment. And again, New York is ahead of the
20 game in this. We're really thinking of how this can help
21 hospitals and communities rather than writing off bad debt and
22 charity and saying that's community benefit, rather than just
23 saying you're training, you're doing a residence is community
24 benefit. Let's talk about real community benefit. Let's talk
25 about supporting programs in the community that help promote

1 health. We’ve been working very closely with HANYS and Greater
2 New York Hospital Association, our local public health partners
3 around the prevention agenda to make this a reality today. And
4 incrementally over time this is going to add up. You know, the
5 0.04 percent – 0.04 percent of revenues that hospitals today
6 spend on what I call community benefit. On real community
7 benefit. These are statistics that haven’t been published yet.
8 Has to change. Has to meaningfully go toward communities to
9 support programs to keep people healthy. And we’re going to
10 work with hospitals to make that every dollar spent meaningful.
11 You know, it’s not hard. We’ve asked hospitals to identify
12 two priorities from the prevention agenda and then develop and
13 implement a plan to address them. They have to actively invest
14 in their communities and what can hospitals do to encourage
15 people to do more? How can they encourage people to eat more
16 fruits and vegetables? What can hospitals do to help a community
17 combat substance abuse? Well, what hospitals do remains to be
18 seen, and I hope they’ll put on their creative thinking caps for
19 this challenge. We are very serious about this and we plan to
20 recognize hospitals that increase community benefits with an
21 annual award and more to come on that front as well.
22 That concludes my report. I’m sure there’ll be many
23 questions, and thank you.
24
25 JEFF KRAUT: Questions for Dr. Shah? Hello everybody.

1

2 MICHAEL FASSLER: Just another issue, anything happen in
3 terms of regulation of electronic cigarettes?

4

5 NIRAV SHAH: The question related to any legislation on
6 the regulation of electronic cigarettes. This is something
7 that's kind of been a sleeper issue. People have said that
8 electronic cigarettes are a way for folks to quit smoking, and
9 what they have actually turned out to be from a public health
10 perspective is a gateway for people to start and for youth to
11 start smoking. So we're looking very closely at what is
12 currently available and what we can do under regulation versus
13 what we need to do under statute to manage this emerging public
14 health problem of electronic cigarettes.

15

16 JEFF KRAUT: Dr. Bhat.

17

18 DR. BHAT: Dr. Shah, I commend you for starting to do
19 something that you promised last year, to put in public health
20 positions in underserved areas. But what I'm hearing, you're
21 saying that New York State is probably going to be acquiring
22 about 1200 physicians over the next decade, or something, in
23 five or six years. (Having) started out well, I think at least
24 you started with at least 16 or 20 that you're starting out, I
25 think you have to have a very robust program to put in primary

1 care physicians in underserved area. The point that you made
2 saying about, going back and looking at medical schools, I read
3 somewhere out of the 160 medical schools that you have, that
4 only 10 medical schools have even a Chair for private practice.
5 When are they putting them there for resources? That's what we
6 need. We don't need another cardiology program, we don't need a
7 program to do the more sophisticated kind of surgery. I think,
8 at least in New York State I think all the medical schools
9 should be having a Chair for family practice so that they could
10 train more number of people to go in and practice.
11 And the third thing that I would like to commend you is the
12 technology part of that. I think there's no other way to go
13 forward without embracing technology, especially that I'm
14 practicing having 15 to 16 medications is common. That's a big
15 problem for us because most going see four or
16 five different people and everyone, given them prescription. We
17 do not know what they're taking. Having this program that
18 you're putting out where we could go in, no matter what they're
19 on, every time they go to the hospital, they come back, the more
20 medications are added to that. I think it's a good thing that
21 you're doing. Thanks.
22
23 NIRAV SHAH: Thank you.
24
25 JEFF KRAUT: Dr. Rugge.

1
2 JOHN RUGGE: Regarding telehealth; I'm aware but one
3 primary care system that has a demonstrated need and available
4 academic medical center ready to go and all the necessary
5 technology but inadequate reimbursement. Is there to be any
6 participation in the workgroup by members of the DFS as an
7 example, so that we can address equitable reimbursement across
8 all payers?
9
10 NIRAV SHAH: Absolutely. We have to align the incentives
11 to pay for the outcome we want. And if the outcome is greater
12 use of telehealth, you can build all the demonstrations and
13 pilots you want, but at the end of the day no one is going to
14 adopt it if they don't get paid for it. Troy Oeschner and
15 others have been kept well aware of the conversations in
16 telehealth and they're actively involved.
17
18 JEFF KRAUT: Dr. Grant.
19
20 DR. GRANT: Thank you, Dr. Shah, for your report on the
21 community assessments, particularly, and health. I'm concerned
22 about dental, pediatric dental issues, and there doesn't seem to
23 be enough finite data. This is probably one for Dr. Boufford
24 and her preventive agenda. And breaking it down beyond the
25 county level. I'd like to see some more finite data in terms of

1 the cities and what's going on there. So I appreciate your
2 looking into that.
3
4 DR. SHAH: If you can measure it, you can move it. You can
5 only change it if you understand and pediatric dental and
6 pediatric psych are two high priority areas where we really need
7 to improve the data so we can show the shortages and critical
8 needs and then address those problems.
9
10 CARLA BOUTIN-FOSTER: Thank you commissioner for the
11 report. So I have two questions; one question is regarding the
12 community benefit. You mentioned - well, this is a two part
13 question. You mentioned the carrot, that there will be awards
14 for hospitals will be recognized. Is there a stick component to
15 that, hospitals that are not compliant? And then my second
16 question - I'll just ask two questions - my second question is,
17 is workforce diversity viewed as part of community benefits. In
18 other words, making sure that the residency program participants
19 adequately reflect the communities that are being cared for.
20
21 NIRAV SHAH: Great questions. Let me answer the second
22 first. You know, the community benefit is for all hospitals
23 including those that don't have training programs, so it hasn't
24 been a formal part of that agenda. I'm happy to talk about how
25 we might engage on that agenda going forward for the hospitals

1 that it makes sense to. But back to your first question, in
2 terms of community benefit, one of the things that we can do,
3 and what other states are considering is the schedule H of the
4 form 990 that has been filed with the IRS by every hospital is
5 an important document where they lay out their plans. Maybe
6 they should submit all of them to the Department of Health.
7 Maybe we should publish them on our website. You know, peer
8 pressure is a very good motivator, and time and again
9 transparency around where the dollars are actually going can
10 engage people around the conversations that need to happen. I'm
11 hoping that we can work with the hospitals, and to date, we have
12 been very actively engaged with HANYS and Greater New York
13 around positive communication and conversations of a stepwise
14 pathway to that. They have not shirked away from what community
15 benefit means for them and their communities. I mean, their
16 mission, their board's mission is to serve the community. This
17 shines a light on how they might be doing it. One of the things
18 for example, I've encouraged almost every hospital in the State
19 of New York has a committee on quality, a board level committee
20 on quality. Right? So they understand where the problems are in
21 their hospital and then work on it, and it's the first thing
22 they talk about in their board meetings. Maybe they should have
23 a board level committee on community benefit, and not only a
24 board level committee, but also a community level committee on
25 community benefit where they can engage members of the community

1 outside of the board including local public health leaders and
2 other providers and other stakeholders at the table around
3 community benefit in real time. 9.5 percent is a lot of money,
4 and that over time can make a huge difference, especially when
5 the hospital in a small community is the biggest employer.
6
7 JOHN RUGGE: Just that one possible name for those
8 community-based, community benefit would be regional health
9 improvement collaboratives.
10
11 NIRAV SHAH: Regional health improvement collaboratives;
12 RHICs. That's a great idea. And I think I read that somewhere
13 in the waiver document. We had a great conversation with Cindy
14 Mann on Monday where she toured with us in New York and spoke
15 about RHICs specifically as one of our approaches to system-wide
16 transformation. Regional planning where frontline data,
17 frontline community leaders can engage in the tough
18 conversations more than a state can do from Albany or anywhere
19 else. That is one model that we've seen work very well up here
20 in the Finger Lakes HSA and can work elsewhere across the State.
21
22 JEFF KRAUT: Maybe during the Planning Committee report
23 that Dr. Boufford's going to give, -- oh, you're giving the
24 Planning Committee, are you doing the Public Health? On the
25 Public Health it came up during your committee meeting about

1 alignment with local government and that's the issue, the issue
2 of alignment and getting folks that are in the community – the
3 type that you describe, but getting it aligned with both the
4 public health and the not-for-profit healthcare providers. Any
5 other questions? Thank you very much, Dr. Shah, and now that we
6 have a Full Council meeting thanks to a little weather
7 disruption down here, what I'd like to return to is I'd like to
8 just now that everybody is here I'd like to introduce and
9 welcome a newest member of the Public Health and Health Planning
10 Council, Dr. Lawrence Brown. He's going to replace Sue Regan
11 who's council term has expired. Dr. Brown comes to us with
12 expertise in public health as well as a vast knowledge in
13 addiction research and treatment, and Dr. Brown, on behalf of
14 the Council I look forward to working closely with you. On
15 behalf of Dr. Streck, I welcome you, and hopefully when we do
16 have a break or something that you go and introduce yourselves
17 to Dr. Brown. And if you're traveling with us, many of the
18 planes have been canceled this afternoon going back to New York
19 City. Well, try to move us along today to make sure those
20 members can do so.
21 With respect to the departure of Sue Regan who I think was
22 one of the longest serving, if not the longest serving member,
23 certainly on the predecessor public health council and now,
24 we've prepared a resolution of appreciation for her. However,
25 we'd like to honor her with, when both Dr. Streck and myself are

1 here. Since she's been this kind of iconic figure on the public
2 health council all these years, and we want to acknowledge her
3 obviously for many years of dedicated service when we meet again
4 this October. So, hopefully you'll all join and we'll give her
5 our congratulations.
6 I'd like to go back and do one other thing. I'd like to
7 adopt the minutes now that we have everybody here, and I'd like
8 to move the first order of business on the agenda, is the
9 adoption – well, it's not the first order, but I'm going to
10 adopt the June 6, 2013 meeting minutes. May I have a motion to
11 adopt? I have a motion. I have a second?
12 Second.
13 Second, Dr. Bhat. Is there any questions? If not, all
14 those in favor, aye?
15
16 Aye.
17
18 Opposed? Motion carries. I'm going to – we're going to
19 take something, because we were supposed to have a project
20 review committee prior to this, but even before we suspend the
21 council meeting, I want to go and call one of the applications.
22 The reason I'm calling this application out of order is we have
23 three recusals, and I'm afraid that we'll lose a quorum. If we
24 do not have Dr. Shah here and the other individuals here, I'm
25 afraid we're going to do it – because I don't know what your

1 plans are. So, I'm going to call application – this is, I'm not
2 convening the Project Review Committee out of order to call this
3 one application. The application is 121239C, the Visiting Nurse
4 Service of Rochester and Monroe County, Monroe County. Mr.
5 Booth, Ms. Hines, and Mr. Robinson have been recused. Mr. Booth
6 and Mr. Robinson have left the room. And so I call that. May I
7 have a second?
8
9 Second.
10
11 I have a second, Ms. Rautenberg. Mr. Abel.
12
13 CHARLIE ABEL: Yeah, the Department recommends approval of
14 the application. They've satisfied the statutory requirements
15 and the, and we advance it to the Council for their
16 consideration.
17
18 JEFF KRAUT: OK. Are there any questions of the
19 Department? Hearing none, I'll call the vote. All those in
20 favor, Aye?
21
22 Aye.
23
24 Opposed? Abstention? The motion carries. Thank you.

1 Now I'm going to suspend the meeting of the Project Review
2 Committee, and should I go back now to the emergency project
3 review committee? This is the Full Council. I'm suspending the
4 Full Council, excuse me. And—so now I'm going to open up the
5 special meeting of the establishment committee to consider two
6 applications, which I will hand over to Mr. Booth to present.
7
8 CHRIS BOOTH: Call to order—
9
10 JEFF KRAUT: I know it's confusing, but just bear with
11 us. There's a process.
12
13 CHRIS BOOTH: Call to order the special meeting of the
14 Establishment and Project Review Committee. Application for
15 home health agency licensures. There's actually only one
16 application that's being brought forth. It's 2083L, Parkshore
17 Home Healthcare LLC, d/b/a Renaissance Home Healthcare.
18 Interest declared by Mr. Fassler. The Department recommends
19 approval with a contingency, and I move it, is there a second?
20
21 Second.
22
23 JEFF KRAUT: Second, Mr. Fassler. Mr. Abel.
24

1 CHARLIE ABEL: If you'll recall two weeks ago these two
2 project were deferred from the regular Establishment and Project
3 Review Committee agenda because the names were very similar to
4 one another. Staff have reached out to both of the applicants
5 and the Parkshore Home Healthcare, d/b/a Renaissance Home
6 Healthcare as an existin LHHCSA will be brought forward for
7 these additional counties. We recommend approval of that
8 application. We have discussed the situation with the other
9 applicant. The applicant has agreed to be deferred and will
10 work on a revised name. So we have this, the Parkshore Home
11 Healthcare, d/b/a Renaissance Home Healthcare can be recommended
12 for approval. We do make that recommendation to the Council.
13
14 JEFF KRAUT: Are there any questions? OK. So we're
15 deferring application 2054L, and the motion is on the table to
16 approve application 2083L. Do, are there any questions? All
17 those in favor, aye?
18
19 Aye.
20
21 Opposed? Abstention? The motion carries.
22
23 CHRIS BOOTH: That concludes our meeting.
24

1 JEFF KRAUT: Ok. I'll have a motion to close the
2 meeting. I have a motion, Dr. Martin, a second Mr. Fassler.
3 We're closed.
4 Now I'm going to return and reconvene the Public Health and
5 Health Planning Council meeting, and we're now, it's my pleasure
6 to introduce the Executive Deputy Commissioner Kelly, who's
7 going to describe the New York state EFINDS program. Ms. Kelly.
8
9 MS. KELLY: Thank you. So, EFINDS, evacuation of
10 facilities in natural disasters systems. The system has been
11 designed as the patient and health facility resident tracking
12 and locating system during emergency evacuations. During
13 Hurricane Sandy you may recall nearly 8000 patients and facility
14 residents were evacuated from nine hospitals, 25 nursing homes,
15 and 22 adult care facilities in New York City, Long Island, and
16 the lower Hudson Valley. The year before 10,000 patients and
17 health facility residents were evacuated during Hurricane Irene
18 and remarkably were quickly repatriated. Not so fast with
19 Sandy. We came away from Sandy faced with an imperative and
20 consensus among providers and government officials that we must
21 quickly acquire the tools to assist providers I tracking and
22 locating patients during evacuations. We previously had no
23 system in place. So during Sandy, some facilities were
24 uncertain about where their patients and residents were sent.
25 Receiving facilities did not always know where people came from.

1 During Sandy we were unable to track patients and the status of
2 their condition. Uncertainty posed different challenges,
3 difficult challenges during repatriation or discharge to other
4 facilities. Families had no knowledge of where their loved ones
5 were sent. Some people still were searching for loved ones
6 weeks after the storm. Many residents were sent without
7 adequate health records, without medication information. So,
8 EFINDS is not the final solution, it is the first step towards a
9 solution. We needed to have a program in place before the
10 hurricane season began.
11 Using the health commerce system in which providers already
12 have accounts, those that are regulated by the Department of
13 Health, we have established a common platform for sharing
14 patient and resident information. At least the location of
15 patients as they move through the system during an evacuation.
16 It's a simple, secure, universally accessible functioning
17 patient tracking system. In your packet you have a one-page
18 back and front quick reference tool to EFINDS. We needed to
19 assure that we had a simple system that could be easily accessed
20 to enable the tracking of patients and location across all
21 facilities. This system allows for data entry through barcode
22 scanners or direct data entry as well as paper-based
23 transmission. It gives that State and its partners real time
24 access to the data. DOH is currently in the process of
25 providing all facilities with barcoded wristbands preprinted

1 with each facilities name, scanning equipment, and we're in the
2 process of providing training.
3 The reason why we wanted to preprint the wristbands with
4 the name of the facility as well as a unique barcode and unique
5 number for each facility is the very reason that people were
6 receive – evacuated residents, patients were received into
7 facilities and I witnessed when I was at the emergency
8 management office in Brooklyn, facilities that said, we've just
9 received residents and we don't know where they come from and
10 they speak Russian or another language, and we don't know really
11 how to communicate, and we don't know who these individuals are.
12 So, first we needed to accomplish having wristbands that had the
13 name of the facility. For, in an emergency HIPPA allows us to
14 provide information during an emergency movement. I'll mention
15 one particular issue with one of our partners, sister agencies
16 that has been addressed in the system. So, we're in the process
17 of distributing the information. We've become kind of a business
18 operation this summer in the Health Department. We procured the
19 materials. We had been taking large barcoding printers to
20 barcode and then print the names of the facilities. We are
21 basically servicing over 2500 providers, and I'll give you later
22 in the description the names of the other providers besides
23 hospital, nursing homes, and adult care facilities. And we're
24 programming the barcode scanners so that when a facility is

1 evacuating they'll be able to enter some of the key information
2 that we need entered for the – during the evacuation.
3 An App for mobile devices, which Dr. Shah will be very
4 happy about, has been developed and is currently being tested by
5 information technology services staff. Training is being
6 provided by the Health Commerce Institute staff through our
7 regional training centers. We've coordinated with provider
8 associations and now we have a webinar, web-x posted to the
9 Health Commerce system, and we will provide you with that link.
10 The program actually takes about an hour, but providers could
11 either come to the training program or get on a call to
12 participate, but we also wanted to afford providers the ability
13 to have staff within the facility with the equipment in hand go
14 through the training program and repeat it, or scroll through it
15 as needed. And so that's just been provided.
16 So, accessing EFINDS is really role-related. So each
17 provider has – participates on the Health Commerce system which
18 has been used by the State to communicate with providers, and
19 it's certainly used heavily during emergencies, particularly
20 during evacuations. What we've done is we've identified certain
21 roles within each facilities, within each facility, so there's
22 an EFINDS data reporter or reporters whose job it is to enter
23 information through the barcoding scanners, or if need be to,
24 we've provided each facility as we've sent out the packages with
25 paperwork associated with each unique barcode so that

1 information could be entered by hand if there's a problem with
2 internet access or power there may be the inability or need for
3 people to move quickly, but at least they would be able to enter
4 information, get the bracelets on the residents, send them to
5 the receiving facility, and the receiving facility, we would
6 expect, would have power, internet access, and would be able to
7 enter data into the system. We're also going to provide access
8 to local health departments and of course state health
9 department regional office, central office, facilities will be
10 able to access information in terms of the facilities that are
11 sending residents and the receiving facility will be able to
12 access information. And associations, for example, the Greater
13 New York Hospital Association and other associations have very
14 distinct roles that they assume during health evacuations and in
15 New York City at the health evacuation center. Greater New York
16 assists in the process. If health evacuation centers have to be
17 set up in other counties, association personnel may be there or
18 local health department personnel so they will also have access
19 to the system.
20 So, a facility would be able to not only to wait for an
21 activation, but if a facility had to evacuate and started moving
22 patients or residents out, then it could on it's own,
23 voluntarily activate the system and begin the process of
24 scanning information on patients and residents, getting the
25 wristbands on people. But if there were a regional evacuation,

1 then the State Health Department would notify the health
2 facilities, because the State, the Health Commissioner assumes
3 the role as director of the health evacuation center anywhere I
4 the State, and we would be following the training that has been
5 provided to facility staff, following the protocol that they
6 have been trained on and have the opportunity to drill, and I'll
7 mention a drill that took place in July. We try to keep the
8 system as simple as possible, so if we're training people with
9 respect to various scenarios, last week we had a meeting with
10 New York City Health Department, and New York City Office of
11 Emergency Management with both the City and State health
12 commissioners as well as the commissioner for city OEM. We were
13 playing out a scenario where there was a hurricane pointed in
14 the direction of New York City and affecting certain hurricane
15 zones in New York City, and we were assessing what needed to be
16 done 96 hours out, 72 hours out, 48 hours out. So, during that
17 process where we would be predicting an evacuation in certain
18 zones, always subject to change because the weather is
19 changeable, we would begin the process of a preplanned
20 evacuation, and we have gathered surveys information from
21 providers about their send, receive, relationships, their
22 capability to shelter in place if needed, but we also know there
23 can be events that which there's no 72 hour lead time so that
24 we're playing out scenarios with providers, staff about
25 situations where there's internet access, where there's no

1 access, where the scanners are working or they're not working,
2 but really trying to have a simple system that would require
3 that people would at least have fundamental information, not
4 only about the sending facility but entering the first name,
5 last name, date of birth at a minimum, entered into the system
6 through the keyboard emulating scanners or through handwritten
7 entries into the paperwork. The system enables the facility to
8 identify whether the patient or resident is sheltering in place,
9 whether the person is being transferred and what the destination
10 is. The receiving facility then would change the location of
11 the specific patient or resident and update the information
12 about where they are. They're able to do that multiple times
13 for multiple locations because we know people were moved
14 multiple times during Sandy.
15 There could be a no notice evacuation, as I mentioned,
16 where a facility really has to move quickly and if time permits,
17 we certainly want people to get the bands on. We had a test
18 recently at Kings County Medical Center in association with
19 University at Hospital of Brooklyn and the lead for emergency
20 preparedness said it took about 18 seconds to enter the
21 information on each patient following the rubric that we
22 identified. So that was pretty good, and that was just the first
23 test of the system. We're going to recommend that facilities
24 get the training, revisit the training, plan drills where the

1 state and localities are willing to work with the facilities to
2 plan training and drills.
3 What is the future? As I said, it’s the first step because
4 it’s not the end all and be all. We’re expecting, and I’ll
5 mention, these are all the other agencies that are working with
6 us. We refer to them at the O agencies, we in the Health
7 Department. But they’re known as ‘offices’ and so those
8 agencies, and this gives you a sense of how many people we’re
9 supplying providers, it’s over 2500 providers, all our
10 hospitals, nursing homes, adult care facilities, office for
11 children and family services, juvenile justice center, OASAS,
12 the Office of Alcoholism and Substance Abuse Services,
13 residential treatment programs, Office for People with
14 Developmental Disabilities, the developmental centers as well as
15 some residential programs, Office of Mental Health, state
16 hospitals as well as licensed housing settings, and then
17 supportive housing sites. This program is designed, and we’re
18 equipping to cover statewide over 300,000 patients and residents
19 in the programs. But, it’s not the end because we know that
20 hospitals, for one, still are trying to think through how, for
21 acute care patients, how they can provide a more robust set of
22 information with the transition, and HANYS is exploring a pilot
23 with electronic medical records. Greater New York Hospital
24 Association has convened a group of clinicians to talk about
25 ways in which they can improve upon the transmission of data.

1 But this system, and I know we don't have the time for it, but I
2 have a walkthrough and I'll send the walkthrough to you, but
3 that walkthrough would allow you to see the demo and actually
4 view various stages of it. And we also have an hour web-x that
5 you'll be able to look at to really explore it. But we're
6 compelled to have something in place before the hurricane season
7 hits the east coast and the north east. And we're not done yet,
8 but we're doing it, and I just wanted to – I know you wanted to
9 learn about it, hear about it, and the other tools I can provide
10 at your leisure. You'll be able to get more experience with the
11 program. Thank you.
12
13 JEFF KRAUT: That's wonderful. Are there any questions?
14 Dr. Boufford.
15
16 JO BOUFFORD: It is very impressive. Can I ask, what's the
17 mechanism for family members to find out where their family
18 members are? Where does that access point occur?
19
20 MS. KELLY: Yeah, so what we've done first is the first
21 modules developed are the data entry and the locator between
22 facilities and for the State to be able to view it. The second
23 module that is now being developed is for calls that go in the
24 city to 311 to be able to do a random access and search of the
25 data by first name, last name, date of birth, knowledge about

1 where the facility was. That is in place. I don't have it here
2 to show you today, but that was key because obviously when we
3 were in Brooklyn working with the City, that was a big issue.
4 How do we find out? We think people moved from facility X to
5 facility Y but really are they there? Because people didn't
6 necessarily end up where the send facility thought they were
7 going. This will allow us to have the receiving facility enter
8 into the system and it's searchable. So we're coordinating with
9 the City so that that information – so the questions going to be
10 do we have our own call center because we're setting up call
11 center capability, do the search for 311 or give 311 the
12 capability? Or have the city Health Department do it? We
13 haven't quite worked, nailed that down, but that's easily
14 accomplished because we're staffing to form a call center, to
15 stand up a call center to be able to search the data and then
16 during Sandy we did, Health Department did provide two 311
17 answers to where is my loved one? Where is my family member.
18
19 JO BOUFFORD: So you would be doing that statewide then?
20
21 MS. KELLY: Yes.
22
23 JO BOUFFORD: OK. Thanks.
24

1 DR. BHAT: Thank you. In the dialysis industry there's
2 something called (crown web) which is part of
3 put it, we went live as of last year before Sandy struck. What
4 crown web does, I think, every new patient that has been started
5 on dialysis we have to provide all the information from all the
6 sectors, and they have a centralized registry, and during Sandy
7 (Ipro) which is the local ESR in New York State
8 was able to track every one of the patients because they could
9 go into the crown web. Crown web has demographic information,
10 which center they came from, some of the clinical data, what
11 medications, this and that, that's already in there, about 53 or
12 56 fields. What I would recommend is that you probably should
13 get in touch with Ipro which is the local body that is in charge
14 of this and talk to them because when we call we had to take
15 care of during maybe three or four days hundreds of patients
16 that just showed up and said, we are on dialysis take care of
17 us, then we had to let them know. Yes, we do have them, and as
18 a result of that we did not lose even a single patient during
19 Sandy. That's something that we learned from Katrina. During
20 Katrina a lot of patients, dialysis patients just simply
21 disappeared because they did not even know what had happened to
22 them.
23
24 MS. KELLY: So this is the SRD network has this system.
25 Right. I failed to mention also this system allows a facility to

1 upload data from their own files with more robust information
2 that would be attached with the evacuation transmission. But
3 thank you.
4 This, at this point this is available for residential, so
5 it's for facilities where people are residing and have to move.
6 We haven't yet, we envision how could it apply to home health
7 patients who are living at home and are moving or other
8 patients. We really have to have some further discussion with
9 groups and provider networks. A representative of the ESR
10 network attends the Greater New York Hospital Association
11 emergency response coordinating council. I have met with him
12 and talked with him, and we also are seeking a grant to do some
13 further study about what happened to the dialysis patients
14 during Sandy. Thank you.
15
16 JEFF KRAUT: Dr. Brown
17
18 LAWRENCE BROWN: First and foremost I thank you for your
19 greetings and welcome, and you've only set the bar a lot higher
20 given you telling me who I'm replacing. I'd just like to as for
21 clarity, I know that you said this is currently operational for
22 residential facilities…
23
24 MS. KELLY: Yes.
25

1 LAWRENCE BROWN: Is there, there's the New York State
2 OASAS…
3
4 MS. KELLY: Yes, yes.
5
6 LAWRENCE BROWN: Has already communicated with
7 outpatient facilities to actually participate. Is that just
8 planning for something down the future? Or is that –
9
10 MS. KELLY: I'm not sure – I don't know fully the
11 communication that's occurred with outpatient facilities. This
12 program is available for 464 OASAS residential treatment
13 programs, so they'll be able to use it, and thank you for
14 bringing up OASAS because they did not, they could not under
15 their law and their rules allow us to preprint the name of the
16 facility, so we had to work out a very unique coding, and before
17 we could even start to print, and we just worked it out this
18 week, and we've started to print.
19 For their outpatient facilities I know they have the
20 challenge of assuring that if someone has to move out of an area
21 and go to another facility that there's information on dosage to
22 continue the medication regimen. So they're communication with
23 outpatient facilities may be regarding another system, but they
24 are participating in this system for residential programs.
25

1 JEFF KRAUT: Thank you. Any other – I'll tell ya, you
2 know, it's an impressive piece of technology and it's more so,
3 and you know, the people who worked on this and yourself and the
4 staff and the leadership, think about this, nine months ago
5 storm hit us nine months ago and this is up and running. You
6 know, how long did it take us to get the CON automated or much
7 less change the website for the Public Health – when we merged?
8 You know, that almost took the same amount of time. Eight
9 months. Took us eight months. So, I mean, if you combine the
10 amount of time that they've had to think this through, design
11 it, and get into a field test? I mean that's the way it should
12 work.
13
14 MS. KELLY: I can tell you how though.
15
16 JEFF KRAUT: OK.
17
18 MS. KELLY: Because I was at the table. The federal
19 government offered us to use for free the joint patient
20 assessment and tracking system, JPATS, so I went to a pre – I
21 made a presentation about the vision and I said to the division
22 of the budget, Governor's office really, we've had a champion
23 for this in the Governor's office, Ian Rosenblum working for the
24 Governor on the emergency response systems – and I said we can
25 go to free, this is a federal system. We won't own it and it

1 won't be integrated with our other data. And so the IT people
2 said, "We can do it. Let us do it." And so I said, "Well then,
3 you better get it done by the end of May. I want it done
4 otherwise we're going with the free system." But then I needed
5 to get money to get the wristbands and the – so I got the green
6 light and I said to people, "OK, I got the green light; now
7 where's the money?" But we did apply for social services block
8 grant and we are getting federal funding for it.
9
10 JEFF KRAUT: I'll just way on behalf of the Public Health
11 and Health Planning Council everybody should be commended. This
12 is an important aspect of our public health, and we look forward
13 to EFIND 2.0 and 3.0. where honestly it does connect up with the
14 New York e-health collaborative and the RHIOs where, you know,
15 once the name is posted technologically it should be able to
16 automatically go, grab the data that's in the health information
17 organizations, and attach it to the record. But, let's get
18 started. So, thank you. Thank you so much.
19 Before I ask – Karen's on the phone – so before I introduce
20 Ms. Westervelt, I just want to make the Council aware of another
21 happy event that we should all congratulate and that's the
22 appointment of one of our own, Dr. Sullivan, as one of the O
23 agency heads whose recently the Governor announced her
24 appointment as acting Commissioner of the Office of Mental
25 Health pending the confirmation of the Senate, and we just want

1 to congratulate you. They couldn't have picked a better more
2 compassionate thoughtful person. So, we congratulate you.
3 [applause]
4
5 JOHN RUGGE: Some people will do anything to get away
6 from this council.
7
8 JEFF KRAUT: Essentially what you have to do to remove,
9 you can't even resign because we need you for a quorum. So, and
10 we thank you for flying up here because we did want to have a
11 quorum, and eventually, as you know, Dr. Sullivan because of
12 that position will have to part company with us. But we always
13 think greatly. And we'll deal with that, I guess at the October
14 meeting too.
15 I'd like now to introduce Ms. Karen Westervelt who will
16 give us the report of OHSM. She's on the phone.
17
18 KAREN WESTERVELT: …with you in person, although it sounds
19 like from the weather I'm not missing much, necessarily,
20 although it's rolling in here at Albany as well, I have to say.
21 So, let me add my congratulations to Dr. Sullivan and also my
22 welcome to Dr. Brown as well. We look forward to working with
23 Dr. Sullivan in her new role, and Dr. Brown as a member of the
24 Council.

1 And I'll just be very brief in my remarks. I just wanted
2 to let the council know that we're about to issue a competitive
3 application process in the very near future for assisted living
4 program beds and under the State budget process for this year
5 2013-14 social services law was amended that authorized the
6 Commissioner to establish up to 4500 new assisted living program
7 beds, and the amendment to the law limits applicants to
8 transitional adult homes, and these are adult homes with a
9 certified capacity of 80 beds or more in which 25 percent or
10 more of the residents are persons with serious mental illness
11 and currently we've got 16 transitional adult homes that have
12 existing out beds and we expect a large cohort of the
13 conditional homes to submit applications for this competitive
14 process as well. Currently there's 49 conditional homes to
15 submit applications for this competitive process as well.
16 Currently there's 49 transitional adult homes in New York State
17 which are eligible to apply. That number is expected to change
18 as providers are taking the necessary steps outlined in their
19 mandatory compliance plans to reduce the number of persons with
20 serious mental health illness in their homes proportionately
21 anyway. And we expect that the majority of transitional homes
22 will apply for some complement of these beds. And for this
23 initiative new construction projects will not be eligible for
24 reimbursement for construction costs meaning that no
25 transitional adult homes can apply for beds above and beyond

1 their existing licensed capacity. However, reimbursement is
2 available for those transitional adult homes to proposed to
3 convert to 100 percent assisted living beds. And also capital
4 construction costs for approved out projects will be limited to
5 necessary certified costs and will not exceed 25 percent of the
6 applicable RHCF bed cap for their specific region. And also for
7 the purposes of this initiative applicants will need to provide
8 information that describes how their proposed out application
9 will foster a community-like atmosphere that increases
10 independence through the development of independent living
11 skills, adherence to resident choice and services and support,
12 allowing residents to exercise control over their schedule and
13 activities and environmental and operational considerations
14 which foster an atmosphere of independence and community living
15 similar to enriched housing programs.
16 And we're expecting that all applications will need to be
17 received by the Department no later than close of business on
18 September 30, it's actually 4 p.m. on September 30 and will be
19 reviewed on a non-comparative basis as noted in the legislation
20 if you will. And questions regarding this initiative will be
21 accepted through August 14 and responses will be posted to the
22 Department's website by August 28, and interested applicants for
23 these beds must attest that they have a valid license as a
24 LHHCSA or certificate of approval as a CHHA. So those who have
25 neither an addendum will be made as part of the CON application

1 process and is clearly referenced in the solicitation that will
2 be going out. Approval letters will be forwarded to those
3 applicants who are selected to proceed to the next phase which
4 will be a CON submission. And several questions have been
5 received from non-transitional adult home providers seeking
6 information on the timing of the next round of out beds to be
7 offered. Currently the Department is actively planning for the
8 release of the remaining, it’s 3000-plus out beds. This is part
9 of an original 6000 bed project and we’re planning on releasing
10 a solicitation for the remaining slots in early October of this
11 year, and this would be consistent with the existing legislation
12 requiring that all out beds be offered by March 31, 2014. So we
13 have a little work ahead of us, but we’re going to be processing
14 first the 2500 cohorts and then the 3000-plus cohort moving
15 forward. And that’s it. Thank you.
16
17 JEFF KRAUT: Are there any questions for Ms. Westervelt?
18 OK. Obviously that’ll all be up on the website and people can
19 you know, look through it in a little more detail. But thank
20 you.
21
22 KAREN WESTERVELT: Absolutely.
23
24 JEFF KRAUT: Is there anything else you wish to report?
25

1 KAREN WESTERVELT: Nope. That's it. Thank you.

2

3 JEFF KRAUT: Great. Thank you. And I'm going to ask Dr.

4 Boufford to please give the report on the Committee on Public

5 Health.

6

7 JO BOUFFORD: Let me start by thanking Ellen Rautenberg

8 for chairing the meeting. (wish to comment) when I finish with

9 the brief summary of the Committee. You may recall just to

10 remind everyone about the sequence, early in 2013 the

11 Commissioner sent out guidance to hospitals and local health

12 departments that they were asked to really fulfill their mutual

13 responsibilities for community needs assessment, community

14 benefit reporting on the hospital side, and community health

15 plans on the local health department side, together and asked to

16 include other stakeholders in local alliances. In that process

17 there was sort of a multi-step process setting priorities

18 identifying their plans and identifying the metrics they would

19 be using to measure their progress. Very nice blue button on

20 the New York State Health Department website allows them to

21 enter into a very extensive and terrific set of resource

22 materials that the Health Department developed around each of

23 the five prevention agenda goals. In addition there were some

24 additional funds from the Robert Wood Johnson Foundation which

25 allowed the development of a communication plan for getting

1 information out to the local communities and the small grants
2 program for five rate providers of regional technical support to
3 local communities, and the LIJ North Shore volunteered to
4 provide that support pro-bono for the Nassau-Suffolk County
5 region. I'll keep reminding you of that Jeff. I know you had
6 mentioned that you were going to do that. And quite recently
7 actually one of the areas where there'd been a bit of question
8 mark was New York City, and recently Commissioner Farley had
9 approached the Greater New York Hospital Association. There was
10 a meeting where Patsy Yang was one of our number represented the
11 Health Department in conversations with collected community
12 relations representatives of the New York State hospitals to
13 talk about the particular priority areas in Take Care New York
14 which overlapped with the prevention agenda with which the City
15 Health Department could work I partnership with those hospitals
16 that wish to engage on those issues. So that was really, a bit
17 of a void I being able to know what was going on in the city,
18 and we're very pleased that they moved ahead on that.
19 A monthly update is being requested from each of the local
20 health departments and the latest update in July, I guess every
21 other month, showed that 52 out of 54 responded; 19 are in their
22 priority setting stage. The membership of the coalitions, 48
23 and 44 hospitals – 48 said hospitals were involved, these are
24 the health departments who have to respond so I hope those other
25 six hospitals are being found. The, 44 said CBOs, community-

1 based organizations are at the table, 41 involving other
2 agencies of government, 27 with schools, 21 involving academic
3 and business, and 10 have health plans as part of their
4 coalition. So this is really good. Thirty-seven have not yet
5 set their priorities but those that have, the top two selected
6 are preventing chronic disease, especially cardiovascular
7 disease and diabetes, with associated obesity, and the second
8 most population, most prevalent is promoting mental health and
9 promoting substance abuse, which is a great result, because if
10 you recall that goal was added by the ad-hoc leadership group
11 because it isn't under the purview of the Health Department, and
12 to the Health Department's credit they allowed us to put it in
13 there. So, it's very gratifying.
14 So, those reports are due in November, and we're continuing
15 to work with the Department and with several foundations around
16 the State, hopefully to generate a small grants opportunity for
17 those communities when they submit their plans in November to
18 have funding possibilities and hopefully leverage some
19 additional funding for the regional resource providing
20 organizations, pending what we hope will be resources that link
21 it up to the RHIC activity down the road with the waivers and
22 the SIM grant that's pending.
23 So, the report that, the committee that Ellen chaired, we
24 wanted to bring together in this venue, were to bring together
25 people who were actually doing it on the ground to find out –

1 this all sounds great conceptually but is it really working, and
2 there were representatives from Steuben, Allegheny, Yates Rural
3 Health Network, public health director from Ontario County, and
4 representation from the P2 Collaborative and the public health
5 educator from Orleans County Health Department and they all
6 discussed really their progress and interaction with one
7 another. And I think they're pretty happy with the way it's
8 rolling out, generally. So, Ellen if you want to comment on
9 Jeff's question about alignment or any other issues that came up
10 at the meeting.
11
12 JEFF KRAUT: Are there any questions for Dr. Boufford?
13 Yes, Dr. Boutin-Foster.
14
15 CARLA BOUTIN-FOSTER: I have a question; are you looking
16 to work with or align the State Health Improvement Plan with
17 what's happening with health benefits exchange? So, the
18 Minority Health Council met with, I believe it was Donna
19 Hollihan, I think that's her name, she's one of the directors
20 for the Health Benefit Exchange, and we were talking about how
21 could we align what's happening with state health improvement
22 and health benefits exchange so when someone, when the
23 navigators enroll residents, New York State residents into
24 plans, that there's also an opportunity to talk about health,
25 chronic disease management. So, this is something that we're

1 trying to do with the Minority Health Council and we'd love to
2 of course continue to work with you as the plan rolls out. Just
3 remember what you said, health in all policies. So this is a new
4 policy that's come down, and how to integrate health with it.
5
6 JO BOUFFORD: That's great. Thank you.
7
8 JEFF KRAUT: Ms. Rautenberg.
9
10 ELLEN RAUTENBERG: I would just say, as we're an
11 organization that is going to be a navigator, there is really –
12 there's a very clear function of those navigator enrollment, it
13 is enrollment, and to hit your numbers you really have to be
14 doing that as opposed to health coaching and other things. So I
15 think there will be limited availability of their time to be
16 able to be more comprehensive. It would be very nice to think
17 about that in a different venue, but right now that's not how
18 it's structured.
19
20 JO BOUFFORD: Yeah, just add that I did say that we had,
21 we were able to get some funding and pro-bono actually support
22 from the Robert Wood Johnson Foundation to develop a
23 communications plan. However that plan is not funded. So we're
24 now trying to work to get some resources, because I think there
25 has been or have been a lot of concerns especially around sort

1 of culturally competent messages and public information to
2 vulnerable populations which has come out of the conversations
3 we’ve been having with the Minority Health Council in an effort
4 to you know, develop some toolkit and framework for dealing with
5 -- and most of the -- obviously I did mention, I think every
6 community has to pick two priorities and one where there’s a
7 health disparity to address. But we are concerned about this,
8 and I hope we’re able to find some resources at some point in
9 this process to actually implement a robust communication plan.
10
11 JEFF KRAUT: Yeah, I mean, you know, if you think of what
12 the Commissioner was saying, putting aside mandating,
13 encouraging all health providers – you know if you have a
14 finance committee, I bet nobody misses those meetings, and you
15 have a quality committee you should similarly, that’s the job,
16 the issue to have a community benefit, a community health, a
17 community outreach of the providers, and if the governance was
18 aware of what we’re trying to do and some of the mandates both
19 from the federal and the state with community benefit, just
20 getting that communication out and having a trustee saying what
21 are we doing, is of enormous benefit. And it’s – and I know
22 both, at least in the hospital industry, both Greater New York
23 and HANYS have been very, very active in promoting this, making
24 people aware. It’s discussed at almost every trustee event that
25 they bring, but it really takes that kind of coordinated

1 response. And in advance of that, I think, working through all
2 the professional and advocacy associations to kind of get this
3 out. This is really something. We as an industry, we talked
4 about leadership in those counties that you brought here,
5 there's leadership, they want to do this, there's alignment, and
6 when that's present, you can maybe accomplish if not great
7 things then much better things than we're used to. Mr. Robinson.
8
9 PETER ROBINSON: Just to comment on that, you know, as
10 individual hospitals start to more formally involve themselves
11 in community benefit and community health, I think the danger
12 really is that there will be a lack of adequate coordination
13 between institutions in the same community. And I do think that
14 this is one area where some kind of regional planning activity
15 can link these initiatives to be sure that we get the
16 synergistic benefit of the totality of what those resources are
17 in a community rather than trying because of the
18 accountabilities of 990s and other kinds of things to sort of
19 focus it down to sub-segments that might actually not be
20 properly coordinated. So, just a thought.
21
22 JEFF KRAUT: Well, let me ask you a question; we've heard
23 about the unique relationships up in Rochester, Syracuse, do the
24 health providers, do you get together regularly? I mean,
25 there's so many other things you talk about, but does everybody

1 talk about let's pick one or two things in community health? Do
2 you ever get to that?
3
4 PETER ROBINSON: We do. I mean, there's two forums for
5 that actually. One is the HSA which everybody's heard about, but
6 in fact, the other way the providers get together is the payers
7 actually convene to –
8
9 JEFF KRAUT: That's the only way they can legally get
10 together.
11
12 PETER ROBINSON: That's exactly it. And so, we actually
13 have a good partnership, Chris is here and can speak to it as
14 well because he's actually one of the conveners of that now, and
15 so there is a process of priority setting among the CEOs and the
16 health plans to begin to look at that. And then we do an
17 integrated community-wide community benefit plan, and each
18 institution will essentially adopt that community-wide plan,
19 rather than an individual institutional plan. Obviously
20 geography in New York City is going to be a lot different than
21 Rochester. I think we probably have a much more manageable
22 environment here, and while we compete on a number of different
23 levels in these kinds of areas, we do find synergy and an
24 ability to collaborate.
25

1 JEFF KRAUT: Well, when we proposed the RHICs we
2 recognize they'd all have to grow up based on the unique culture
3 relationships, geography, that is why we didn't want to be
4 prescriptive, I think, on how they get formed and what they do.
5 Thank you so much, Dr. Boufford. I'd now like to turn to Dr.
6 Rugge to ask him to report on the committee on health planning.
7
8 JOHN RUGGE: I think as everyone knows the Health
9 Planning Committee is engaged with taking a fresh look at
10 ambulatory services and their regulation. Events on the ground
11 have overtaken structures that were put in place 40 and 50 years
12 ago with physician groups developing some high tech, high end
13 services that would have once been considered institutional, and
14 as a further dimension you look at the need to develop a full
15 spectrum of categories of ambulatory services suitable for
16 fitting every different communities needs across the State. To
17 that end we began with two meetings, one dedicated to understand
18 the perspective of the providers, stakeholders, that being in
19 June, I'm sorry, May and June, there was a meeting with
20 presentations and discussion with the payer community. In July,
21 last month, we met to consider the first series of option papers
22 that have been delivered or prepared by DOH staff. Under
23 consideration were high end imaging, radiation therapy,
24 ambulatory surgery centers, office-based surgery, and urgent
25 care. With regard to the first four of those five, the

1 committee was looking at narrowing the options as we come back
2 to reconsider having slept on the possibilities, as we look at
3 how that fits into the discussions of yet other categories still
4 to come.
5 The most interesting discussion may have been regarding
6 urgent care and realizing how many different roles urgent care
7 plays and different communities and micro environments across
8 the State. And somewhere where it seems that urgent care really
9 is providing a safety valve in terms of sparing ER usage in
10 other communities, some to the west, it would appear that urgent
11 care centers are replacing or displacing primary care. And so
12 it really means taking another and deeper look at that in the
13 light of yet other service categories.
14 Coming up in September, there will be consideration of
15 upgraded D&T centers, retail clinics, freestanding EDs, with
16 consideration as well as telehealth in those contexts. This
17 will finally culminate the following month with a discussion of
18 the so-called mega physician groups which really is an
19 aggregation of all those various services and will entail,
20 again, a new look at 600.8 in terms of what indeed is considered
21 institutional and what is considered "private." In addition it
22 is really taking a look again at the boundary between that which
23 is regulated by DOH as institutional practice and what falls
24 under licensure through the Department of Education. So, these
25 investigations are, really go to the heart of how we describe

1 ourselves, how we operate, and how we connect to one another
2 across what has become one of the destinations so much
3 healthcare and that is on the ambulatory side.
4 Would only warn everyone, we are having all-day meetings
5 which up till now have been four hour meetings. Given the list
6 we’re expected to make, I think all day may really turn into
7 all-day meetings. Just more than we can handle in only a few
8 hours. In addition we’re looking at using our one hour
9 committee slot during regular committee days to do catch-up
10 issues and to go back and loop around to some of the issues
11 we’ve not been able to come to consensus about. The hope is
12 that in the month of November the committee will be prepared to
13 come to consensus and come to vote in time for the December
14 meeting for the Council for consideration and adoption of
15 recommendations. In the meantime during the fall, the Department
16 and the (Executive) are taking a close look at this work, and it
17 will likely inform the development of the legislative agenda on
18 the part of the Governor for the coming year. That’s all.
19
20 JEFF KRAUT: John, do you just want to mention when the
21 next dates of the full committee, if you happen to have them,
22 just, if not, we’ll pull them out. Just so everybody knows if
23 you’re available and you’d like to attend. September 13?
24

1 JOHN RUGGE: September 13, lucky Friday will be the next
2 all-day meeting of the Health Planning Committee, following the
3 regular Committee day, the previous day, we would expect to use
4 that one hour slot, or one and a half hours on the 12th as well.
5 Our papers are now in preparation both revising or narrowing the
6 option for the first set of categories and developing new papers
7 regarding the items still to be considered.
8
9 JEFF KRAUT: And October 4 would be the one that would
10 follow that.
11
12 JOHN RUGGE: That's right.
13
14 JEFF KRAUT: OK. So, September 13, and both of those I
15 believe are being held in New York? Yes.
16
17 JOHN RUGGE: And to say the obvious, all members of the
18 Council are really welcome to participate in our meetings, read
19 the papers, and any form that you wish to help to contribute to
20 the discussion that should be lively and rich.
21
22 JEFF KRAUT: Are there questions for Dr. Rugge? OK.
23 Well, it's a lot, if you read the papers and the interim
24 documents it's a significant body of work as he's described, and

1 it comes at an important time, a challenging time in our field.
2 Thank you.
3 Dr. Gutierrez, would you like to give a report on the Codes
4 Regulations and Legislation Committee.
5
6 ANGEL GUTIERREZ: I would like to.
7
8 JEFF KRAUT: Then by all means, do so.
9
10 ANGEL GUTIERREZ: The committee of Codes, Regulation, and
11 Legislation convened on July 18th to review the children's camp
12 regulation for a second emergency adoption. The proposed
13 amendments are necessary to implement chapter laws that
14 establish the New York State Justice Center for the Protection
15 of People with Special Needs and strengthen and standardize the
16 safety net for vulnerable people that receive care from New
17 York's human service agencies and programs. This legislation
18 identified children's camps for children with developmental
19 disabilities, and this type of facility within the oversight of
20 the Justice Center. It required the Department of Health to
21 promulgate regulations approved by the Justice Center pertaining
22 to staff screening, training, and incident management. Prior to
23 hiring camp staff that would have contact with campers, a camp
24 must verify that the person is not in the Justice Center staff
25 exclusion list. If not on the Justice Centers staff exclusion

1 list the operator must also consult the Office of Children and
2 Family Services state central registry of child abuse and
3 maltreatment. Camp staff is required to maintain mandated
4 reporter training and review and acknowledge an understanding of
5 the Justice Center's code of conduct. Camp staff must report
6 abuse, neglect, and other significant incidents to the Justice
7 Center and local health department. Camps are required to
8 cooperate fully with reportable incident investigations and
9 provide all necessary information and access to conduct
10 investigations. Camps are not specifically required to obtain
11 an appropriate medical exam on a physically injured camper, and
12 unless a waiver has to be granted, camps must convene a facility
13 incident review panel to review the camps responses to a
14 reportable incident. This measure also specifies reportable
15 incident investigation procedures and written incident report
16 requirements for investigations conducted by the Justice Center
17 and those delegated to the local health department. After a
18 motion and a second the committee unanimously recommended
19 adoption to the Full Council and I so move.
20
21 JEFF KRAUT: Thank you. I have a motion, may I have a
22 second? Second, Mr. Fassler. Are there any discussions?
23 Hearing none, I'll call for a vote, all those in favor aye?
24
25 Aye.

1

2 Opposed? Abstentions? The motion carries. Sorry, Dr.

3 Boutin-Foster is abstaining and I still have enough – and the

4 motion carries.

5

6 ANGEL GUTIERREZ: And that concludes my report, Mr.

7 Kraut.

8

9 JEFF KRAUT: Thank you very much Dr. Gutierrez. I'd like

10 to – can I have that please? So, OK, so what I'd like to do is

11 I'd like to now turn over the meeting to Mr. Booth who will give

12 us a report on the Committee of Establishment and Project

13 Review.

14

15 CHRIS BOOTH: Than you. First application is 131217C,

16 Saratoga Hospital. Replace and modernize all seven existing

17 operating rooms and the intensive care unit and create three

18 additional ORs by performing major renovations of existing and

19 new space. Both the Department and the Committee recommend

20 approval with conditions and contingencies, and I move it.

21

22 JEFF KRAUT: I have a motion. Do I have a second?

23 Second, Mr. Fassler. Any comment?

24

25 CHARLIE ABEL: No, no additional comments.

1

2 JEFF KRAUT: Any discussion? Hearing none, I'll call for

3 a vote. All those in favor, Aye.

4

5 Aye.

6

7 Opposed? Abstentions? The motion carries.

8

9 CHRIS BOOTH: We're going to skip one.

10

11 JEFF KRAUT: Dr. Gutierrez has to come back.

12

13 CHRIS BOOTH: Application 131211C, High Peaks Hospice and

14 Palliative Care. Interest declared by Mr. Booth and Dr. Rugge.

15 Expand hospice services to include Washington County. Both the

16 Department and the Committee recommend approval with a

17 condition, and I move it.

18

19 JEFF KRAUT: I have a motion. I have a second? Mr.

20 Fassler. Any discussion? Any comment?

21

22 CHARLIE ABEL: No additional comments.

23

24 JEFF KRAUT: Hearing none, all those in favor, Aye.

25

1 Aye.

2

3 Opposed? Abstentions? The motion carries.

4

5 CHRIS BOOTH: Application 131252C, the Community Hospice.

6 Expand service area to include Washington County. Interest

7 declared by Dr. Rugge. Both the Department and the Committee

8 recommend approval with a condition and I move it.

9

10 JEFF KRAUT: I have a second, Dr Bhat. Any comments?

11 No? Hearing none, I'll call for a vote. All those in favor,

12 Aye.

13

14 Aye.

15

16 Opposed? Abstentions? The motion carries.

17 CHRIS BOOTH: Application 121245C, Lourdes at Home.

18 Expand the existing certified home health agency to serve Tioga,

19 Chenango, and Delaware Counties. Both the Department and the

20 Committee recommend approval with a condition and I move it.

21

22 JEFF KRAUT: I have a motion, may I have a second?

23 Second, Dr. Martin. Any comment? Any discussion? Hearing none

24 I'll call for a vote. All those in favor aye?

25

1 Aye.

2

3 Opposed? Abstentions? The motion carries.

4

5 CHRIS BOOTH: Application 1213…

6 (move it as a category)

7 Application 121327c, Hebrew Hospital Home, LTHHCP. Convert

8 an existing long term home health care program into a certified

9 home health care program and expand the service to include three

10 additional counties. The Department recommends approval with a

11 condition as does the Committee. One member abstained.

12 Application 121457C, Split Rock Rehabilitation and

13 Healthcare. Expand the existing level of services by adding a

14 general purpose certified home health agency to serve Bronx and

15 Westchester. Both the Department and the Committee recommend

16 approval with a condition with one member abstaining, and I move

17 those two as a group.

18

19 JEFF KRAUT: I have a second, Dr. Martin. Any comment?

20 Any discussion? All those in favor, aye.

21

22 Aye.

23

24 So moved.

25

1 CHRIS BOOTH: We're going to batch a significant number
2 here in this category.
3
4 JEFF KRAUT: Just, hold on for some of the members. When
5 we batch these, Dr. Brown, you have an opportunity although you
6 hadn't heard the previous discussions about them, any member can
7 object to an application being batched. You're able to pull it
8 out of the batch and we would consider it individually if
9 there's an issue or a question you have about any applicant.
10 So, but what we're trying to do now is where there was no
11 descent or comment or there was unanimity we move them all as a
12 single group. So, go ahead.
13
14 CHRIS BOOTH: 111439B, Bronx SC, LLC. Establish and
15 construct a multispecialty freestanding ambulatory surgery
16 center providing surgical services related to podiatry or
17 orthopedics and ophthalmology at 3170 Webster Avenue, the Bronx.
18 The Department and the Committee recommend conditional and
19 contingent approval with an expiration of the operating
20 certificate five years from the date of it's issuance.
21 Application 122265B, Island Ambulatory Surgery Center.
22 Establish and Construct a freestanding multispecialty ambulatory
23 surgery center to provide pain management, plastic surgery,
24 orthopedics and podiatry services to be located at 2279-81 Coney
25 Island Avenue, Brooklyn. Both the Department and the Committee

1 recommend conditional and contingent approval with an expiration
2 of the operating certificate five years from the date of it's
3 issuance.
4 Application 122270B, Manhattan ASC. Establish and
5 construct a freestanding multispecialty ambulatory surgery
6 center specializing in ophthalmology and oto(laryngology) -
7 that's a tough one, procedures to be located at 465 Park Avenue
8 New York. Both the Department and the Committee recommend
9 conditional and contingent approval with an expiration of the
10 operating certificate five years from the date of it's issuance.
11 Application 131151E, Hudson Valley Ambulatory Surgery.
12 Transfer ownership interest to eight new members to an existing
13 multispecialty freestanding ambulatory surgery center. Both the
14 Department and the Committee recommend approval with a condition
15 and contingencies.
16 131243E, Yorkville Endoscopy Center. Transfer 48.23
17 percent interest to seven new physician members. Both the
18 Department and the Committee recommended approval with a
19 condition and contingencies.
20 Application 122219E, Cardiff Bay Center, LLC. d/b/a
21 Cardiff Bay Center for Rehabilitation and Nursing. Establish
22 Cardiff Bay Center LLC, d/b/a Cardiff Bay Center for
23 Rehabilitation and Nursing as the new operator of the Peninsula
24 Center for Extended Care and Rehabilitation. Both the

1 Department and the Committee recommend approval with conditions
2 and contingencies.
3 131020E, Providence Care Inc. d/b/a Providence Care
4 Nursing and Rehabilitation Center. Establish Providence Care
5 d/b/a providence Care Nursing and Rehabilitation Center as the
6 new operator of Bishop B. Huckley's Episcopal Nursing Home, a
7 240 bed skilled nursing facility and 30 slot adult day
8 healthcare program. Both the Department and the Committee
9 recommend approval with conditions and contingencies.
10 131153E, Oasis Rehabilitation and Nursing. Establish Oasis
11 Rehabilitation and Nursing LLC as the new operator of Cedar
12 Lodge Nursing Home. Both the Department and the Committee
13 recommended approval with conditions and contingencies.
14 Certificate of incorporation for Valentine Fuster Mt. Sinai
15 Foundation for Science, Health and Empowerment, Inc. Both the
16 Department and the Committee recommended approval.
17 A certificate of amendment of the certificate of
18 incorporation of Planned Parenthood, South Central New York,
19 Inc. name change to Family Planning of South Central New York,
20 Inc. Both the Committee and the Department recommended
21 approval.
22 A certificate of amendment of the certificate of
23 incorporation of SS – Joachim and Ann Residents, name change to
24 St. Joachim and Ann Nursing and Rehabilitation Center. Both the
25 Department and the Committee recommend approval.

1 Certificate of dissolution of St.
2 Foundation. Both the Department and the Committee recommend
3 approval.
4 OK. The following home health agency licensures:
5 2056L, 1929L, 1967L, 2057, 2170L, 1801L, 2101L, 2005L,
6 2049L, 2085L, 2064L, 2181L. All of which both the Department
7 and the Committee recommended with an approval. And I'll move
8 those all as a batch.
9
10 JEFF KRAUT: I have a second, Dr. Gutierrez. Is there
11 any comment on any application in the batch? Mr. Abel. No
12 comment. Is there any question of any application in the batch,
13 Dr. Boufford.
14 Doesn't affect any of the - OK. Any other questions ?
15 Comments? All those in favor aye?
16
17 Aye.
18
19 Opposed? Abstention? The motion carries. Dr. Boufford.
20
21 JO BOUFFORD: I was looking in the materials and I
22 apologize if it's apparent but I didn't see it. The sort of
23 interventional ambulatory care centers as surgical centers, do
24 they have to have a backup hospital agreement to function?
25 Because it's not mentioned in the - it sort of encourages them

1 to join a system, should they become, begin to develop, but I
2 was curious about that.
3
4 JEFF KRAUT: To answer.
5
6 CHRIS DELKER: They do have to show evidence of a backup
7 agreement with a hospital as part of the application.
8
9 JEFF KRAUT: Also, I could only tell you you will not get
10 the certificate to open if you do not have a written agreement
11 when you do open.
12
13 JO BOUFFORD: Just interesting, it wasn't mentioned, I
14 mean, it's not mentioned in the material, whether the - I mean,
15 I think it would be interesting to know what the backup hospital
16 is, for example, in certain, in the establishment of some of
17 these pretty extensive facilities, surgical facilities.
18
19 JEFF KRAUT: So, could we do this on a going forward
20 basis. When we have these applicants somewhere on the face
21 page, let's extract out who the backup institution is. At
22 least, or proposed to be. OK. That would probably be better.
23 Yes, Mr. Robinson.
24

1 PETER ROBINSON: So, just another comment on ambulatory
2 surgery centers, which happens to be my –
3
4 JEFF KRAUT: Why not.
5
6 PETER ROBINSON: My area of special interest. As we go
7 through the health planning for ambulatory surgery centers, I
8 think it's important to take a look at the fact that what we are
9 doing with approving these freestanding centers that are moving
10 dollars out of hospitals and moving them at higher cost into
11 community-based settings, it is really actually stressing more
12 the healthcare system in my view, especially given the cap that
13 now exists on Medicaid payments and what we see as the amazingly
14 low rates that are being published on the health exchanges. The
15 economics are just not going to work in the long term, and we're
16 going to stress the system, I think, even more as we approve
17 these applications, and without a real full understanding of the
18 economic consequences to the whole system of this. So, moving
19 to ambulatory surgery centers and freestanding ambulatory
20 surgery centers is a wise thing. But this comes with a dramatic
21 reduc – increase in the payment rates to those facilities, and
22 that piece of it, the economics of it are something that I think
23 we need to pay attention to.
24

1 JEFF KRAUT: John, Dr. Rugge, in your committee you
2 obviously don't have time in the agenda that you've laid out to
3 get it to that depth, but I think if we put an agenda item, and
4 this is something that's come up several years, we're making
5 policy, we're approving things we don't have data. You know,
6 you've made statements that are intuitively accurate, but we
7 don't know, in fact, your intuition is correct, OK? So what we
8 have is we now have several years of data that we are operating
9 this, and I -- you know, I can't sit here and think about a
10 study design that would answer, because it's multi-vectored, but
11 it would be something that we should think and talk about. How
12 do we now see? What is the impact of all of these centers on
13 access, on cost, on the economics of the hospital? Would it
14 have happened anyway? You know, kind of, you know, what
15 occurred? And then the movement and we've said this from the
16 health insurer perspective, I think when we had the planning
17 committee and you invited, I think, Paul Macielak and a few
18 others where they acknowledged, they moved from doctor office
19 surgery, which they did not pay a fee to, to freestanding
20 centers where they do pay a fee and we see all these
21 applications come through, and I think Paul Macielak made the
22 point is well, if they had been done in a hospital we'd still
23 pay more. You know, so it was kind of - and again, we probably
24 have the data now and we could probably see because we have the
25 payments, we have claims data, we could probably do that. We

1 just need somebody, anybody looking for a doctorate in the
2 audience or the council, that's a great topic to undertake and
3 maybe we could encourage one of the academic institutions and
4 think tanks to look at that.
5
6 JOHN RUGGE: …observed, we're making these changes in the
7 presence of an economic whirlwind –
8
9 JEFF KRAUT: Which is free falling.
10
11 JOHN RUGGE: I mean, currently CON entitles a provider to
12 Medicaid facility reimbursement. But if Medicaid goes all
13 managed care, who's to say.
14
15 JEFF KRAUT: Look, by the time we –
16
17 JOHN RUGGE: …we are going to recognize these facilities
18 for a fee or look at a bundled fee arrangement rather than
19 separating a facility versus professional fees. So, in
20 addition, I think a thrust of our committee is to look at what
21 degree do economic realignments obviate the need for regulatory
22 strictures? And whatever we do will no doubt need to be
23 revisited within a few years.
24

1 JEFF KRAUT: OK. So now I'll suspend the planning
2 committee and return back to project review. Thank you.
3
4 CHRIS BOOTH: Application 131207C, Long Island Jewish
5 Medical Center. A conflict declared by Mr. Kraut who has left
6 the room. An interest by Dr. Sullivan who intends to abstain.
7 Expand the center for advanced medicine extension clinic and
8 certify two new services along with four LINACS relocated from
9 other facilities and one new CT simulator. This application
10 amends and supercedes 082086. Both the Department and the
11 Committee recommended approval with conditions and
12 contingencies, and I move it. Is there a second? Second, Dr.
13 Martin. Any discussion? Hearing no discussion, I'll call the
14 question. All those in favor say aye?
15
16 Aye.
17
18 All those opposed? Abstentions? Dr. Sullivan. Motion
19 passes.
20 Group a number of applications here. 131026B, Central New
21 York ASC, LLC, d/b/a Omni Outpatient Surgery Center. Interest
22 declared by Mr. Booth. Establish and construct a single
23 specialty ambulatory surgery center to provide interventional
24 pain management services located a 7887 Seneca Turnpike,
25 Clinton. Both the Department and the Committee recommend

1 conditional and contingent approval with an expiration of the
2 operating certificate five years from the date of it's issuance.
3 Application 131085E, Heritage One Day Surgery. Transfer a
4 total of 27.25 interest to two new members. Interest declared
5 by Mr. Booth. Both the Department and the Committee recommend
6 approval with a condition and contingencies.
7 Application 122304E, First to Care Home Care. Establish
8 Metropolitan Jewish Health System as the sole corporate member
9 of First To Care Home Care. Interest declared by Mr. Fassler.
10 Both the Department and the Committee recommend approval with a
11 condition and a contingency.
12 And I move them as a group.
13
14 JEFF KRAUT: We're going to move that as a group? Do I
15 have a second, Dr. Gutierrez. Any comment by the Department?
16 Any questions from the Council? All those in favor, aye?
17
18 Aye.
19
20 Opposed? Abstentions? The motion carries.
21
22 CHRIS BOOTH: Application 2947L, AIM Services, a conflict
23 declared by Dr. Rugge who is leaving the room.
24 Approval with a contingency is recommended and I move it.
25

1 JEFF KRAUT: I have a second, Dr. Guterrez. Any comment?
2 Any questions? All those in favor aye?
3
4 Aye.
5
6 Opposed? Abstentions? The motion carries. Please as Dr.
7 Rugge to return.
8
9 CHRIS BOOTH: Application 2253L, Home Aides of Central New
10 York. An interest declared by Mr. Booth. Both the Committee
11 and the Department recommended approval with a contingency and I
12 move it.
13
14 JEFF KRAUT: Second, Dr. Gutierrez. Any comment? Any
15 questions? All those in favor, aye?
16
17 Aye.
18
19 Opposed? Abstention? The motion carries.
20
21 CHRIS BOOTH: 121273, Eliant Choice. Establish a
22 certified home health agency to serve Orange, Rockland, and
23 Dutchess Counties. The Department and the Committee recommends
24 approval with a condition with one member abstaining and I move
25 it.

1
2 JEFF KRAUT: I have a second, Dr. Gutierrez. Any comment?
3 Any questions? All those in favor, aye?
4
5 Aye.
6
7 Opposed? Abstention? The motion carries.
8
9 CHRIS BOOTH: Application 121373B, Lockport
10 Ambulatory Surgery LLC. Establish a multispecialty ambulatory
11 surgery center to be located at 160 East Avenue, Lockport. Both
12 the Department and the Committee recommend disapproval based on
13 need and financial perspective, and I move it.
14
15 JEFF KRAUT: I have a second, Dr. Gutierrez. I have a
16 comment, Mr. Abel. Oh, let me just ask the Department to speak
17 and then we'll ask the --
18
19 DR. BHAT: There's a letter that has been produced by the
20 applicant. Can I make a motion to defer this? Or do we have to
21 wait for that?
22
23 JEFF KRAUT: Well, he made the motion –
24
25 DR. BHAT: He did, OK.

1

2 JEFF KRAUT: And it was seconded by Dr. Gutierrez. So
3 now it's before us, just hold on, let the Department comment and
4 then we're not going to take a vote until you make that comment.
5
6 CHARLIE ABEL: Members, I should let the council know that
7 members of the applicant contacted me through email day before
8 yesterday, last night, and had a discussion with them this
9 morning. The applicant is asking for a deferral. Basis for
10 that deferral is so that the applicant can respond to the
11 concerns of the Establishment and Project Review Committee as
12 expressed two weeks ago and indicating that there might be a
13 resolution with the opposing hospital. I, in discussions, two
14 days ago I telephoned one of the members of the applicant who
15 sent me the email and had a discussion with that person, and in
16 my opinion it didn't seem as though the applicant had anything
17 new to bring to the discussion and that the, was really looking
18 for another opportunity to make it's case. I did contact
19 Eastern – representatives from Easter Niagara Hospital to check
20 to see if there was any progress, if there was any communication
21 or if it had changed it's position, and at least Niagara
22 Hospital indicated that the applicant had not contacted them.
23 They did not feel that they wanted to change their position, and
24 indicated they did not want to or would not support a deferral.

1 The Department is not willing to support a deferral at this
2 point either.
3
4 JEFF KRAUT: And when did that request to come - I'm
5 sorry, I just want to be clear of the time.
6
7 CHARLIE ABEL: Two days ago through email, last night, and
8 again, I spoke with them this morning.
9
10 JEFF KRAUT: OK. Hold on. I asked, I told Dr. Bhat he
11 could.
12
13 DR. BHAT: I did not hear what Charlie said. Are we going
14 to be allowing to have a deferral at this stage? Or no?
15
16 CHARLIE ABEL: The Department is declining the request for
17 a deferral and we would like to move forward with the Full
18 Council considering the Department's recommendation for
19 disapproval and the Establishment and Project Review Committee's
20 support and recommendation for the deferral - I'm sorry,
21 disapproval. Disapproval. Thank you.
22
23 JEFF KRAUT: Dr. Bhat, just -
24

1 DR. BHAT: If I remember I was at the Committee meeting when
2 the question that was asked is that the hospital had exhausted
3 all avenues to sit down with this group to see that they can
4 come to some terms. If you remember last year we had a similar
5 application where a hospital was opposing a freestanding
6 ambulatory surgery. We asked them to go back and resolve it. Do
7 we lose anything by saying that if they're coming in and saying
8 that they would like to see common grounds, why can't we just
9 put it up for about a month and ask them to come back?
10
11 JEFF KRAUT: OK. I would just, I'm going to refresh my
12 recollection and if I'm wrong please correct me, because I don't
13 have a transcript. I think we had very pointed conversation
14 with both the applicant and the hospital who I think was at that
15 time explicitly clear, we asked them exactly that. If my
16 recollection is correct, what they told us was that might've
17 been possible had the applicant already built the center and
18 built it in a location that, you know, didn't make sense for the
19 hospital to co-venture, and then the hospital, am I correct, had
20 built it's own center and approved in a previous application.
21 So the opportunity was for the applicants to come and use the
22 hospital center, not to divide up the investment, and they were
23 basically saying, it doesn't make sense for us. And there
24 wasn't a common ground and I would just ask if my recollection

1 is correct and two, you did speak to the hospital and their
2 position did not change.
3
4 CHARLIE ABEL: The applicant has an office-based surgery
5 center in operation approximate to the hospital. The hospital
6 has an extension site on Transit Road several miles from the
7 hospital, and has a contingently approved project to add
8 ambulatory surgery to that site. The hospital is progressing
9 with that application and expects to open that site next year,
10 or later next year. Thank you.
11 All this does not negate the Department's analysis that
12 there is no need for this ambulatory surgery center. The need
13 is met, public need is met by the hospital's own ORs and the
14 contingently approved extension ambulatory surgery site. And
15 that the applicant has not demonstrated to the Department's
16 satisfaction financial feasibility for it's application. And
17 the Department is not in support of a deferral.
18
19 JEFF KRAUT: Let me just – Dr. Rugge, Dr. Martin and then
20 Dr. Boufford. I am not a member of the Establish and Project
21 Review Committee, but did happen to sit through the meeting, and
22 I find myself confused by the geography. There seems to be a
23 very complex pattern about migration and reasons, and additional
24 concern is we pay a great deal of attention to any new applicant
25 with regard to willingness to accept Medicaid and underserved

1 patients, and the discussion which was very rich and indicated
2 that this hospital serves only about 1/3 of the percentage of
3 Medicaid patients that are residing in the County. There's, I
4 would suspect a very good reason for this, but we really don't
5 through that committee discussion, I think have a clear idea of
6 the pattern of care and how the pieces should fit together. And
7 if we have one party willing to go back to the table and
8 negotiate in light of these public discussions which this
9 council has helped to engender, I think that would be helpful to
10 everyone. So I would be in support of deferring the
11 recommendation to make sure that everybody has a chance of
12 finally coming together in a county that, again, has a very
13 confused pattern of migration, out migration, and definitely for
14 services.
15
16 JEFF KRAUT: Dr. Martin.
17
18 GLENN MARTIN: Just a practical question; if we voted down,
19 what does that mean about reapplication?
20
21 CHARLIE ABEL: There would be no reason why the Department
22 would not entertain a new application which from my assessment
23 of the project as submitted and the applicant's direction would
24 be a very different application than the one before you now.
25

1 JEFF KRAUT: Dr. Boufford.

2

3 JO BOUFFORD: Yeah, I was, Glenn asked the one question I

4 was going to ask as well, and then sort of along the lines of

5 John's thinking, it was interesting to me this letter I mean,

6 clearly acknowledges a challenge in getting the two parties

7 together -

8

9 JEFF KRAUT: Can I just ask a question, I'm sorry to

10 interrupt you. When was that letter received?

11 (It was dated yesterday)

12 Have we been given a copy of that letter? First of all,

13 let's just be clear about this; we created a rule that we will

14 not look at any document that was delivered less than three days

15 prior, or today, and we certainly won't look at a document or

16 take it into account if it wasn't delivered to the Department of

17 Health. And the Department of Health has no acknowledgment of

18 receiving that letter.

19

20 CHARLIE ABEL: Even more specifically that correspondence

21 should be directed to the Executive Secretary of PHHPC. This

22 correspondence was not. There was a piece of correspondence

23 directed to me. An applicant's representative was I think

24 attempted to distribute that material to members this morning

25 and was instructed that he could not.

1

2 JEFF KRAUT: But yet, they did.

3 (Yep.)

4 Yes, go ahead. Because this is an issue -

5

6 DR. BHAT: I apologize, because I thought this was all had

7 gone -

8

9 JEFF KRAUT: No, you don't have to apologize.

10

11 DR. BHAT: Well, it was, it came in -

12

13 JEFF KRAUT: Once it's introduced, it's introduced. I'm

14 not going to - but let's just be thoughtful about the process

15 issue and the diversion of our process.

16

17 DR. BHAT: You are absolutely right about it. I think it

18 should've been sent prior, and I was not - I did not even look

19 at the date. I thought it was -

20

21 JEFF KRAUT: So here we are at the 12th hour, an applicant

22 is recommended for disapproval, and they're told, give me more

23 time to talk. It's the 12th hour. We had two weeks since the

24 last meeting. Dr. Gutierrez. I'm not - I'm saying, I'm trying

25 to make the applicants aware that we have a process and we have

1 asked everybody to follow that process, without exception. Dr.
2 Martin. Oh, Dr. Gutierrez, I'm sorry.
3
4 ANGEL GUTIERREZ: So, the first – two points; the first
5 one has to do with the point raised by Dr. Martin before if we
6 can have a clear explanation what we will be voting on and what
7 will happen following that. Number one. Number two; assuming
8 that the applicant is given an opportunity to come back and
9 reapply. This is a unique opportunity to exercise what Dr. Shah
10 was talking about looking at the benefit for the community and
11 for people to work together for the benefit of the community,
12 and I would like to think that whoever is involved in this
13 application process would keep that in mind. Thank you.
14
15 GLENN MARTIN: I presume, and I just want to make sure, the
16 Department's negative review was known to the applicant prior to
17 our meeting? Right. So this is not like it came as a total
18 shock two weeks ago and they're suddenly stimulated into a
19 negotiating stance. They knew that there was problems all
20 along. We discussed it two weeks ago, and then at the last hour
21 they're now saying let us chat without a particular plan about
22 what they're going to be chatting about, or great receptivity by
23 the other hospital. Does that sum it up?
24

1 CHARLIE ABEL: The Department had an opportunity to meet
2 with the applicant directly after indicating that it's
3 preliminary recommendation would be for disapproval, to give the
4 applicant the benefit of the Department's analysis detailing
5 what our recommendation for disapproval was based on and giving
6 the applicant an opportunity to respond, and we considered, and
7 we would have considered any material that came in. In fact,
8 some revised material did come in that we considered. In
9 addition the Department coordinated and mediated a meeting
10 between the applicant and representatives of the hospital,
11 opposing hospital to see if there was any hope for a joint
12 venture or some other resolution or modification to the
13 application that was going to satisfy both the Department -
14 well, primarily to satisfy the Department, but that might also
15 be acceptable to the opposing hospital. We had that meeting.
16 No - we did not make progress in that meeting. We invited both
17 sides to continue that discussion after the meeting. It was
18 reported by both sides that there was no significant progress,
19 and at that point we move forward and let the applicant know
20 that we were moving forward with a recommendation for
21 disapproval. When the agenda was posted to the public website
22 with a recommendation for disapproval, the applicant was sent a
23 notice electronically, posted to NYSECON that the application
24 would be recommended for disapproval at the Establishment and
25 Project Review Committee two weeks ago. That notice went out

1 about a week, eight days before the meeting. There was no
2 correspondence from the applicant in the interim period asking
3 for a deferral or introducing additional information. The
4 applicant was present at the Establishment and Project Review
5 Committee and spoke at length for what they believe are the
6 merits of the application, and of course the opposing hospital
7 was there. Through all this, the Department's recommendation
8 for disapproval based on lack of demonstrating public need and
9 for the lack of demonstrating financial feasibility stands.
10
11 JEFF KRAUT: Dr. Sullivan.
12
13 ANN SULLIVAN: Can you just clarify again what the request,
14 when that request came in for the deferral, and was there
15 anything that accompanied it, or just a verbal request?
16
17 CHARLIE ABEL: The first request for deferral came to me on
18 email two days ago. And I contacted the applicant member
19 following that email because there was an indication in that
20 email that one, the deferral was being made to respond to
21 Establishment and Project Review Committee requested
22 information, and two, seemed to indicate that there might be a
23 resolution between the conflict with the opposing hospital. So
24 I asked specifically in the phone conversation what elements of
25 the Establishment and Project Review Committee, the applicant

1 thought they were responding to because I had no recollection of
2 a deliverable that the Establishment and Project Review
3 Committee was expecting. And so we had a discussion, and
4 lengthy discussion which I'll categorize reiterating the
5 applicant's points with respect to why they think, the applicant
6 thinks that their project should be approved, and I indicated
7 that they had an opportunity to do that. I thought that the
8 applicant at the Establishment and Project Review Committee made
9 a good effort at making it's points clear and that I didn't see
10 any new ground to be discussed. And so, I reittera – or I
11 indicated that the Department was not inclined to grant a
12 deferral. I followed up that discussion with a discussion with
13 the opposing hospital's representatives just to be sure if there
14 was any contact – in the email it indicated that there was
15 contact with the hospital, and that the hospital seemed to
16 indicate that there might be some compromise to be struck.
17 Well, in contacting the hospital, the hospital representative
18 indicated that no such contact had occurred. The hospital was
19 not inclined to continue to work with the applicant, and in fact
20 was opposing a deferral.
21
22 JEFF KRAUT: Any other questions or comments, then I'll
23 go through procedure to ask doctor, answer Dr. Gutierrez's
24 question.
25

1 JOHN RUGGE: I would just only again, say again that I
2 think what was news at the Committee discussion and what became
3 clear is there's less than an optimal service pattern of
4 coverage for all. And the question is whether it's best to
5 leave this in a deferral status to be able to continue those
6 discussions to come to a better resolution, or to deny the
7 process, deny the application and hope that the parties start
8 all over again. I'm concerned it may be better to defer and let
9 the parties, again, look together at reconfiguring a service
10 package that will better serve the people in this county.
11
12 JEFF KRAUT: And if they come back and say, the hospital
13 says look, we've talked all we want - what do you do?
14
15 JOHN RUGGE: I'm not sure - then we should have the
16 hospital explain where are these Medicaid patients going if
17 you're not serving them, where are they going and why? So that
18 we have a better understanding and basis for denying the
19 application.
20
21 JEFF KRAUT: Just remember, for ambulatory surgery it's
22 disproportionately skewed towards an older population, not a
23 younger - you'll see it - because it doesn't equate the same way
24 it does in some of our other services in primary care, but I
25 think it's a valid point. I'm not undermining.

1 This is the process; so we have an application that was
2 recommended for disapproval. A motion was made, seconded, and
3 presented to the committee to adopt that recommendation for
4 disapproval. We now have to vote on that recommendation. We
5 need 13 affirmative votes in order to approve that
6 recommendation. If we do not get 13 votes, the motion will fail.
7 OK. We can then, I believe, Jim just help me on this, if the
8 motion fails I can ask for another motion, correct?
9 (yes)
10 And we can then, there are two other motions I can accept.
11 I can accept a motion to approve and I can accept a motion to
12 defer. If no one makes a motion and what we've done is we've
13 failed the motion for disapproval, I believe the application
14 goes on to the Commissioner with that, that there was no
15 affirmative action taken by the Coucil – oh, no wait, this is an
16 Establishment. It's in a regulatory limbo. It's remember, we
17 had this once before particularly when the State Hospital Review
18 Planning and Public Health each voted differently on an
19 establishment because on an establishment we are the final vote,
20 if I'm correct. So you put the applicant in a regulatory limbo,
21 neither approved or disapproved. Purgatory if you will. Not
22 limbo. So that's the rules; 13 affirmative votes. Correct me –
23

1 CHRIS DELKER: I think another point about it if the
2 applicant were to go into regulatory limbo they would not have
3 the recourse to an appeal of the disapproval. They just—
4
5 JEFF KRAUT: That's what happened with Long Island, and,
6 yes, may it all be blessed. It was an interesting time. It's
7 always the ambulatory surgery centers that create these
8 problems. Anyway, that's the issue. So what I'm going to do,
9 unless there's any other comment or questions you have about
10 that process, I am going to call the question now. Is there any
11 other comments or questions you want to make? OK.
12 We have a motion made and seconded that recommends
13 disapproval of application 121373B. Call for a vote; all those
14 in favor aye?
15
16 Aye.
17
18 Opposed? I'm going to do, just let me do a roll call. Go
19 ahead. So just so we have it for the record in case there is an
20 appeal, we're clear about it.
21
22 Dr. Bhat?
23
24 JEFF KRAUT: By the way, you can vote approved, opposed,
25 or abstain.

1
2 DR. BHAT: Opposed.
3
4 Mr. Booth?
5
6 CHRIS BOOTH: Yes.
7
8 Dr. Boufford:
9
10 JO BOUFFORD: Opposed.
11
12 Dr. Brown:
13
14 LAWRENCE BROWN: Abstain.
15
16 Mr. Fassler?
17
18 MICHAEL FASSLER: Yes.
19
20 Dr. Boutin-Foster?
21
22 CARLA BOUTIN FOSTER: Opposed.
23
24 Dr. Grant?
25

1 DR. GRANT: Abstain
2
3 Dr. Gutierrez?
4
5 ANGEL GUTIERREZ: Yes.
6
7 Mr. Hurlbut?
8
9 MR. HURLBUT: Yes.
10
11 Mr. Kraut? Oh, you're last.
12 Dr. Martin?
13
14 GLENN MARTIN: Yes.
15 Ms. Rautenberg?
16
17 ELLEN RAUTENBERG: Yes.
18
19 Mr. Robinson?
20
21 PETER ROBINSON: Yes.
22
23 Dr. Rugge?
24
25 JOHN RUGGE: Opposed.

1
2 Dr. Sullivan?
3
4 ANN SULLIVAN: yes.
5
6 Mr. Kraut?
7
8 JEFF KRAUT: No. How many affirmative? I only vote if
9 there's a tie.
10
11 It's not going to pass.
12
13 JEFF KRAUT: I have eight affirmative votes. I need 13
14 affirmative votes to pass. I will not entertain another motion.
15
16 JOHN RUGGE: I would move to defer the application.
17
18 JEFF KRAUT: I have a motion to defer. Is there a
19 second? Dr. Bhat. Any discussion? Yes, Mr. Hurlbut.
20
21 MR. HURLBUT: I just want to make sure I get this
22 straight. If this deferral is not approved, this applicant
23 essentially as you well pointed out, I would call it permanent
24 deferral, and what, if any, does the applicant have recourse if
25 we don't do anything? I mean, I just think that's sort of -

1

2 JEFF KRAUT: I would take your comment to heart. I would

3 say that since the application is - we did not - the previous

4 motion was not approved, I think it would behoove us to approve

5 this motion so that process doesn't occur and I would only

6 suggest, Dr. Rugge, to amend it for one cycle; that we come back

7 then make a final disposition of this in the next meeting of the

8 Council.

9

10 JOHN RUGGE: I would be glad to accept that friendly

11 amendment.

12

13 JEFF KRAUT: So we have a motion to defer for one cycle,

14 and it's been second - was it seconded? Well, if not, it's

15 seconded by Dr. Bhat. And then Mr. Hurlbut - so I must've

16 seconded it already. Any other comments? Questions? All those

17 in favor, aye?

18

19 Aye.

20

21 Opposed? Abstentions. Dr. Grant abstains. Do I have the

22 affirmative votes without me? OK, so I have 14 affirmative

23 votes. That motion passed. This application will be deferred

24 for one cycle.

25

1 CHRIS BOOTH: Application 2054L has been deferred at the
2 Department's request.
3 2083L, Parkshore Home Healthcare, LLC, d/b/a Renaissance
4 Home Health Care. Interest Declared by Mr. Fassler. Both the
5 Department and the Committee recommend approval with a
6 contingency, and I move it.
7
8 JEFF KRAUT: I have a second by Dr. Gutierrez. Is there
9 any comment? Any questions? All those in favor, aye?
10
11 Aye.
12
13 Opposed? Abstentions? The motion carries.
14
15 CHRIS BOOTH: That concludes our report.
16
17 JEFF KRAUT: That concludes the report of the Project
18 Review. I just want to give you an update on the Ad-Hoc
19 Advisory Committee on Environmental and Construction Standards.
20 The first update is we should never name a committee that long
21 that we can't remember it. The second thing is, we've had now
22 three meetings. We've had some phenomenal, I'm telling you,
23 phenomenal presentations about the issues of health facility
24 response to severe weather events and flooding. We saw
25 presentations from two applicants, both of whom, one of whom we

1 had approved; one is before us in Memorial Sloan Kettering and
2 NYU. Memorial Sloan Kettering is building a billion dollar
3 ambulatory care cancer center. NYU being rebuilt, $2 billion
4 adjacent to the East River and the mitigation things they've
5 taken and then we heard from Lourdes Hospital in Binghamton with
6 respect to experiencing three 500-year floods in a six year
7 period and the mitigation that they did that effectively let
8 them stay dry to do this. And this committee's charge is to
9 come back with recommendations with respect to flooding, to
10 severe weather events, to change the health code. It will make
11 a recommendation. We have one more meeting in August and I
12 believe it will return – we will have a draft report to the
13 Committee that'll come in September for your consideration about
14 what changes might be suggested for the health code and other
15 mitigation and resiliency initiatives we'd love to see adopted.
16 Are there any other matters? Any other items? Yes, Mr.
17 Hurlbut.
18
19 MR. HURLBUT: I'm going back to listening to the urgent
20 care centers, we're seeing in this community too, I was on a
21 former board of the IDA, there's been about four urgent centers
22 that have come into Rochester, and I don't really have an issue
23 with them other than the fact is they take most insurances
24 except for Medicaid. And again, I'm looking at, from Peter
25 Robinson's viewpoint about cherry picking, this goes back a long

1 time with the hospitals with some of these ambulatory surg
2 centers, here comes another one. And the fact that I approved
3 the project at the time, but the more I thought about it, I was
4 like, there’s got to be – we’ve got to take a look at these
5 urgent centers that, they’re going up like gas stations. And I
6 don’t really have an issue with them other than the fact that
7 they don’t take Medicaid. And that to me is a real problem. And
8 then the other thing is with some of these ambulatory surg
9 centers, these five years, licenses, we are going to have to
10 reapprove them again. And I can’t remember the last time, and
11 I’ve been around a while, that we’ve actually seen another one.
12 So, are any of them coming due?
13
14 CHRIS DELKER: Yeah, they are coming due. A lot of those
15 are getting into their fourth and fifth year, so you’re going to
16 see them, but I think more to the point, I got a call a couple
17 of months ago from the New York City Department of Health and
18 Mental Hygiene and they had been asked by one of our, or a
19 couple of the am-surg endoscopy centers we had approved about,
20 by the operators there, about how they could connect more to the
21 underserved populations because they realize this is a condition
22 of their approval, and they have to show that. So the city is
23 working with them and some community organizations to kind of
24 help the uninsured and underserved get into this, these
25 endoscopy centers, and I’ve asked the city when they’re ready to

1 come to the Council. It will probably be sometime around the
2 first of the year and do a presentation about this effort,
3 because I think that this is certainly one of the things that
4 the five year limited life is prompting at least a couple of
5 ASCs to do is to really reach out to these populations and get
6 them in for service.
7
8 JEFF KRAUT: Dr. Hurlbut, then doctor –
9
10 MR. HURLBUT: I'm a doctor now, great, thanks! I've been
11 here so long. I think it's really – I know, but you haven't
12 aged. I have. I think it's really important though as part of
13 this council is if these centers are not taking care of the
14 underserved and they're just cherry picking, is one of our
15 options is we put them out of business? We give them 30 days or
16 six months to get their numbers up? Or as it's been pointed out
17 before, there's a lot of carrots, but I'm not hearing about a
18 lot of sticks.
19
20 CHRIS DELKER: Well, we had one last cycle, Meadowbrook
21 Endoscopy Center that was, had only shown like, two percent
22 Medicaid enrollment, and rather than give them permanent life,
23 we have given them a two year extension and told them, kind of
24 put them on probation so to speak to get their numbers back up.
25

1 JEFF KRAUT: The only way that this policy will be
2 enforced and taken seriously, if we have an applicant who fails
3 to meet that criteria and we deny them the renewal of the
4 operating certificate. Is that, or the licensure? I know
5 there's a difference. We'd basically, we're asking, when you
6 bring those back, we want to know that. Every applicant knows
7 when they're coming back here. If they are foolish enough to
8 come into this room and not have meet that criteria, the only
9 way - you know, we can extend it, we can do it, but if you want
10 to send the message that this is serious and this is important
11 part of health policy, then you will have to deny one of those
12 applications and not, put them out of business. It's the only
13 way you're going to do it. But am I correct? That's going to
14 be our only recourse?
15
16 CHRIS DELKER: You could disapprove. The Council could
17 disapprove the permanent life -
18
19 JEFF KRAUT: The permanent life. And then that's it.
20 They're closed. Dr. Brown had his hand up before.
21
22 LAWRENCE BROWN: You know, I must confess the last
23 couple of minutes I've been somewhat ambivalent. On the one
24 hand, I certainly support process. On the other hand I also
25 appreciate that the issue about the underserved has been a long

1 standing matter in public health. And I do agree with you that
2 the only way that you're going to get – in fact it used to be
3 said, when I was growing up, and probably many of us,
4 grandparents said, you know, we wanted you to do well, to have
5 the three Rs, reading, writing, 'rithmatic, well, to me for
6 providers it's regulation, reinforcement and reimbursement. And
7 we have somewhat of an influence in that, and I think you're
8 right. The only way to change that behavior is to make it very
9 clear, and I wonder if the Department of Health, how are we
10 communicating that to providers so that they are advised before
11 they have to come back that this is a major concern.
12
13 CHRIS DELKER: Well, the providers are required following
14 their second year of operation to report by an outside entity,
15 the payer mix and case mix of the people they are serving. So we
16 start getting these reports, usually by the beginning of the
17 third year. You know, that I think makes it pretty clear that
18 we're looking at these from the third year on, but again,
19 certainly bringing it up in this forum certainly promotes that
20 same message.
21
22 LAWRENCE BROWN: But, I'm sorry, I just like to get a
23 sense though, even though we get the data, but if we don't get
24 feedback not only that we have the data but what it's
25 significance is, I think that helps the provider to know that

1 not only that someone is looking at the data, that they are
2 taking this very seriously by saying, we're going to now take
3 the next step if this data doesn't improve in the right
4 direction.
5
6 JEFF KRAUT: That'll be built into the review process
7 incoming back, and the mere fact that we're having this
8 conversation now in and of itself will also be helpful because
9 it's an understanding in the community that we're interested.
10 I'm going to go Dr. Martin and Dr. Rugge, then I'm going to
11 come back.
12
13 GLENN MARTIN: Yeah, I guess my only concern is that, I'm
14 just a little bit – my concern is that we're going to be in a
15 JCHO situation where I'm going to smell a lot of wet paint right
16 before they walk in, that I'm going to look at a flat slope for
17 four and a half years and then suddenly a huge amount of
18 enthusiasm for getting their numbers up right before people
19 wander in, and then we're going to be left in this dilemma of,
20 oh, they're making a good faith effort; this is wonderful. What
21 are we going to do? So I guess I'm a little bit, and again, I
22 don't know, I have no idea where we are with the two years and
23 the three years and where things are, but I think that there's
24 got to be an expectation that this is not going to be a last

1 minute, oh we just – little bit what Dr. Brown was saying. And
2 again, we don't have to work on –
3
4 JEFF KRAUT: No, no what I'm going to do just because of
5 the timing, when we have the next cycle, either at the Project
6 Review Committee, we'll spend a little time at that Committee
7 discussing when those batches are coming back to us and what are
8 your options? Because an option is to, if you don't like what
9 you see, you can always give temporary renewal, give them
10 another year to come back, or two years. There's different
11 things if you haven't – and I think you could, you can see what
12 are options are to that point. And I said Dr. Rugge, and then
13 I'm going to come back.
14
15 JOHN RUGGE: Just like to go back to Mr. Hurlbut's
16 observation about urgent care. And that clearly this
17 proliferation of urgent care, perhaps in an unnecessary
18 proliferation is a reflection of distortions in our
19 reimbursement. Both in terms of one payer class versus another
20 and how do we assure that quote underserved are seen, but also
21 between primary care and all other forms of care. And so, this
22 is the kind of issue that we as a planning committee are trying
23 to undertake as is the Council. It seems like there are several
24 solutions; one is to reform reimbursement. And that's why we
25 had the background discussions from the payers and so we are

1 fully alert about what kind of transformations are underway.
2 Knowing that it's unlikely to be sufficient in the near term,
3 another potential solution is franchising. There are only so
4 many, you do a need methodology and if the need is met then
5 there are no more urgent care centers for a community. Knowing
6 that's very difficult and problematic, still, it's a
7 consideration. And the other is to better define what
8 constitutes urgent care. And so if we're defining certain hours
9 of operation, certain levels of service, certain designations
10 that themselves cost money and have those costs met by the
11 reimbursement, that itself can be a disincentive to unnecessary
12 proliferation. So those are, as I see it, this goes to the
13 heart of what we're trying to deliberate in our planning
14 exercise currently.
15
16 JEFF KRAUT: Dr. Boufford.
17
18 JO BOUFFORD: Just a quick comment. I was just looking at
19 the language on which the Medicaid conditionality is articulated
20 and it's quite clear that they're supposed to do an annual
21 report every year for the first two years showing how they're
22 proceeding, and it would seem that maybe we're, we shouldn't be
23 in a situation according to this where we've got a fourth year
24 situation.
25

1 JEFF KRAUT: Could I, just to make this point, just to
2 get to – if the Department has the data of everybody we've
3 approved, why don't we at least every six months, every year,
4 get that report so to your points we're not getting surprised to
5 the degree it exists, and therefore you'll know if there's a
6 gap, we're not going to wait for the five year limited life
7 renewal. Dr. Bhat.
8
9 DR. BHAT: Cherry picking is a reality. And what about the
10 other article 28s where they don't have to come back in five
11 years' time? Somebody has, -- how do you plan to take a look at
12 it? Because I think in my industry I see, there is a patient
13 who is an undocumented individual, I know where exactly that
14 person is going to end up. And there's a big problem with it.
15
16 JEFF KRAUT: But again, I don't think it's as black and
17 white as we've maybe described it, but that's where I think we
18 would benefit from an extended conversation. So, did you want to
19 say something doctor? I'll come back to Mr. Hurlbut.
20
21 ANGEL GUTIERREZ: My point has been addressed. Thank
22 you.
23
24 JEFF KRAUT: And then, let's make this, Dr. Hurlbut – MR.
25 Hurbut.

1

2 MR. HURLBUT: Boy, this is great.

3

4 JEFF KRAUT: I don't know, it's the Freudian beard that

5 gets me.

6

7 MR. HURLBUT: Oh, you consider me a psychiatrist now?

8

9 JEFF KRAUT: Far from it.

10

11 MR. HURLBUT: I may need to go see one after this. I just

12 say, John, in your deliberations with these urgent care centers,

13 I think, one way to really take care of this is to force them to

14 take Medicaid. You have to take, you have to take a certain

15 percentage of Medicaid just like the nursing homes do, hospitals

16 do; we have to take 75 percent of the population that's in the

17 community. And I'm just suggesting so that it sort of defers

18 cherry picking and they may not want to come in then, because

19 hospitals, let's face it; they've got a big burden on them where

20 there's a lot of regulations on them, there's a lot of things

21 that they've got to do, and they've got to take care of a lot of

22 people that a lot of other people don't and they refuse to do.

23 So I think we've got to be careful and I said this seven, eight

24 years ago, that if we allow a lot of this stuff to happen, even

25 though it might make sense in the short term, in the long term

1 the hospital systems will deteriorate and not be able to
2 function because the cherry picking has gotten to the point
3 where there's no more cherries left. So I'm just suggesting
4 that when you go through your deliberations with urgent care
5 centers because there are no regulations on them that I know of,
6 that we need to take a look at.
7
8 JEFF KRAUT: Dr. Gutierrez. I'm finished. Go ahead.
9
10 ANGEL GUTIERREZ: That's where I'm lost. I favor the
11 access to the underserved. But I'm not sure, I've been here two
12 years, I'm not sure when this application wave begun where this
13 centers told that they were expected to deliver care to the
14 underserved and on what proportion. If the answer is yes, then
15 we need to hold them.
16
17 JEFF KRAUT: Are you talking ambulatory surgery or urgent
18 care.
19
20 ANGEL GUTIERREZ: Yes. Both.
21
22 JEFF KRAUT: OK. Ambulatory surgery is a licensed
23 regulated entity and every applicant is aware of that
24 requirement that we've imposed on the Council. Urgent care
25 today is not regulated. It is not regulated. It is not subject

1 to Certificate of Need, we do not impose that, and in some
2 instances you know, when we talk about this as you're talking,
3 it is the practice of medicine which is regulated differently
4 and has different things here. We're talking about the concern
5 of I think that the market is changing. Consumers are changing
6 the market. It's not only urgent care. There'll be other
7 disruptive innovators in the marketplace that are offering
8 convenience and other things that actually function outside of
9 CON for a very rational reason that they do. Because they don't
10 rely, they don't get a fee for it, they don't get special
11 reimbursement. And I know, I don't want to get into the
12 Planning Committee but there is that balance; do you stop
13 innovation? Do you stop the thing? Everything chips away at
14 our traditional model, and that's why the health system has to
15 change. It goes back to things the Commissioner has said in
16 this room over the past three or four meetings. Let me close
17 down this portion of the open mic discussion, and I think Mr.
18 Booth wants to make a comment, and then I'll make one last one.
19
20 CHRIS BOOTH: Yeah, my comments about abstentions and our
21 history with abstentions, and I'm a little concerned and I'd
22 like to have maybe at the next meeting let's have a conversation
23 about abstentions and whether we should have them, and whether
24 we should have them under what circumstances, because my concern
25 is we're all on this committee for a purpose which is to make

1 some hard decisions. And it seems over the last couple of years
2 on a couple of the cases where there are hard decisions or
3 controversial decisions, we end up not acting because people
4 abstain in numbers significant enough to make it not an action.
5 And I think we're here for a reason. We're not here just to
6 approve the ones that are not controversial. We're here to make
7 decisions even on the hard ones, and I think we should have that
8 conversation.
9
10 JEFF KRAUT: And I'll make the last comment. And it just
11 goes back to the communication directly with the Council. And I
12 don't - I use this as the example to take advantage of this, we
13 are going to redistribute what we said our rules are. The only
14 way we can enforce those rules is if we get a piece of a
15 communication and we put it down if it violates our rules. Once
16 you bring it into this room it's part of the conversations; very
17 hard to keep it out. I don't think we have the ability to
18 sanction an applicant or their advisor, but they also have to be
19 put on notice and I will talk to I guess Dr. Streck that they
20 perform, they violated our rules, we're alerting them, and I
21 don't think there is a sanction we can dip, but we could - it
22 only works if we enforce the rules ourselves. And we just have
23 to remember that we try to establish that so we're all informed
24 at the same time. That's all. What happened happened, and it's
25 fine. It's not fine. What happened happened. So, again, I

1 think that's one of the things we'll just redistribute the rules
2 to everybody else. And Dr. Martin, I'll give you the last word.
3
4 GLENN MARTIN: That was not my intent at all. But I'm, I
5 sit on the, still, what used to be the pharmacy and therapeutics
6 committee for Medicaid when it existed and this happened all the
7 time. Again, big money's involved and drug companies would be
8 busily slipping things under people's doors in their offices and
9 the like. And there were rules there and some degree of
10 sanctions. So it may not be a bad idea just to chat with that
11 department and see if they may have had another approach to
12 dealing.
13
14 JEFF KRAUT: We'll ask our counsel. Just to do that.
15 But I'm not honestly looking for sanctions. I'm just looking to
16 enforce.
17
18 GLENN MARTIN: …policy is at work. And I'm not sure
19 they're any better than here.
20
21 JEFF KRAUT: We're the best stick. Yes. I have a motion
22 to adjourn? Do I have a second? Dr. Bhat.
23 (inaudible)
24 Thank you very much. Just remember our next meeting is
25 September 12, is our committee meeting.

1

2 [end of audio]

3

Public Health and Health Planning Council

2014 Meeting Timeline

PHHPC Mailing Date	PHHPC Committee Meeting Dates	PHHPC Meeting Dates	PHHPC Meeting Location
01/21/14	**01/30/14**	**02/13/14**	**NYC**
03/18/14	**03/27/14**	**04/10/14**	**Albany**
05/13/14	**05/22/14**	**06/12/14**	**NYC**
07/15/14	**07/24/14**	**08/07/14**	**Albany**
09/02/14	**09/11/14**	**10/02/14**	**NYC**
11/04/14	**11/13/14**	****12/04/14**	**Albany**

PHHPC meetings begin @ 10:00 a.m.

*Albany Location - Empire State Plaza, Concourse Level Meeting Rooms 6
**Albany Location – To be determined. Start time 10:15 a.m.
NYC Location - 90 Church Street, Meeting Rooms A/B, 4th Floor, New York, NY

ADOPTED:

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

October 3, 2013

REGULATION

Report of the Committee on Codes, Regulations and Legislation **Exhibit #3**

Angel Gutiérrez, M.D., Chair

For Information

13-13 Amendment of Section 12.3 of Title 10 NYCRR (Administration of Vitamin K to Newborn Infants)

12-20 Amendment of Part 425 of Title 10 NYCRR (Adult Day Health Care Programs and Managed Long Term Care)

For Discussion

Section 405.4 of Part 405 of Title 10 NYCRR (Amendment to Hospital Sepsis Safety Protocols)

Part 23 of Title 10 NYCRR (Control of STDs)

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 225 of the Public Health Law, Section 12.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective 90 days after publication of a Notice of Adoption in the New York State Register, to read as follows:

12.3 Precautions to be observed for the prevention of hemorrhagic diseases and coagulation disorders of the newborn and infants related to vitamin K deficiency.

It shall be the duty of the attending physician, licensed midwife, registered professional nurse or other licensed medical professional attending the newborn to assure administration of a single [parenteral] intramuscular dose of 0.5 - 1.0 mg of [natural] vitamin [K^1;] K1 oxide (phytonadione) within [one hour] six hours of birth in accordance with current standards of medical care.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Paragraph (4) of Section 225 of the Public Health Law gives the Public Health and Health Planning Council authority to promulgate this regulation with the approval of the Commissioner of Health.

Legislative Objectives:

The proposed rule expands the time window for the administration of vitamin K to newborn infants to remove a barrier to mothers completing the first breastfeeding prior to routine procedures, such as vitamin K administration.

Needs and Benefits:

Current hospital regulations (10 NYCRR § 12.3) require administration of Vitamin K to the newborn within one hour of birth. This short time period has been identified as a barrier in ensuring that new mothers and their infants have the recommended 30- 60 minutes of uninterrupted time for mother-infant skin-to-skin contact to complete the first breastfeeding before routine procedures occur, such as vitamin K administration. There are no medical reasons to require that vitamin K be administered to newborns within one hour of birth. This proposed rule expands the time window for administration of vitamin K to newborns from within one hour to within six hours of birth, which is consistent with the 2012 American Academy of Pediatrics Policy Statement and with the position statement of the Canadian Pediatric Society, Fetus and Newborn Committee (originally issued 1997). A public health goal of the New York State Department Health is to

increase exclusive breastfeeding, and removing this barrier may help promote and support early initiation and exclusive breastfeeding during the birth hospitalization.

Costs:

Costs to the State Government:

The rule does not impose any new costs on state government.

Costs to Local Government:

The rule does not impose any new costs on local government.

Costs to Private Regulated Parties:

The proposed rule would have very minimal costs for hospitals. Minimal costs for hospitals may include the cost of changing the hospital policy and procedures for administering vitamin K to newborn infants and the costs of training staff to inform them of the change. Vitamin K will continue to be administered to newborn infants in the same manner and the same dose as is done currently under 10 NYCRR §12.3. The proposed rule will simply change the current regulation to allow for greater flexibility.

Costs to the Regulatory Agency:

The rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

The rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties. Hospitals were and will continue to be required to document the administration of vitamin K.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The Department considered other possible time frames. Extending the window for the administration of vitamin K to newborns from within one hour to within six hours was consistent with the recent recommendation of the 2012 American Academy of Pediatrics Policy Statement and with the position statement of the Canadian Pediatric Society, Fetus and Newborn Committee (originally issued 1997).

Federal Standards

The rule does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed effective date will be upon publication of a Notice of Adoption in the State Register.

Contact Person:

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

REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

The provisions of these regulations will apply to the 228 general hospitals in New York State, including 18 general hospitals operated by local governments. Three general hospitals in the State are considered small businesses. These small business hospitals will not be affected differently from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those three hospitals considered small businesses as well as the 18 hospitals operated by local governments. Compliance will require: (a) reviewing and changing written policy for the administration of vitamin K to newborn infants; and (b) training applicable providers and staff about the change in the timeframe for administering vitamin K.

Professional Services:

Professional services are not anticipated to be impacted as a result of the following: (a) changing the timeframe for administration of vitamin K to newborn infants; and (b) training providers and staff about the change in the timeframe for administering vitamin K.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a

result of: (a) changing written policy and procedures for administering vitamin K to newborn infants; and (b) informing staff about the change in the timeframe for administering vitamin K to newborn infants. This will apply to those hospitals defined as small businesses.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

There are no adverse impacts anticipated. This regulatory change increases the flexibility of administering vitamin K. Hospitals will have a minimum of 90 days following adoption of these regulations to change their policy and protocols for administering vitamin K to newborn infants and three months to inform staff about the change.

Small Business and Local Government Participation:

These regulations have been discussed with leadership from the Hospital Association of New York (HANYS), the Greater New York Hospital Association (GNYHA), and the Iroquois Healthcare Alliance. These associations represent hospitals throughout the State of New York, including those that are small businesses and operated by local governments. These three associations were all supportive of this initiative.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not required.

RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

The provisions of these regulations will apply to general hospitals in New York State, including 47 general hospitals located in rural areas of the State. These hospitals will not be affected in any way different from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those hospitals located in rural areas. Compliance will require: (a) reviewing and changing written policy for the administration of vitamin K to newborn infants; and (b) informing applicable staff about the change in the timeframe for administering vitamin K.

Professional Services:

Professional services will not be impacted as a result of these regulations.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) changing written policy and procedures for administering vitamin K to newborn infants; and (b) training staff about the change in the timeframe for administering vitamin K to newborn infants. This will apply to those hospitals located in rural areas of New York State.

Minimizing Adverse Impact:

There are no adverse impacts anticipated. This regulatory change increases the flexibility of administering vitamin K. Hospitals will have a minimum of 90 days following adoption of these regulations to change their policy and protocol for administering vitamin K to newborn infants and three months to inform staff about the change.

Rural Area Participation:

These regulations have been discussed with hospital associations that represent hospitals throughout the State, including those that are located in rural areas. These associations have been supportive of this initiative.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. Newborn infants are still required to have a single dose of vitamin K after birth. This medication will be provided in the same setting (hospital or birthing facility) by staff with similar credentials, and the procedure will take the same amount of time. The change in the regulation will just widen the time window which this medication may be given, from within 1 hour of birth to within 6 hours of birth.

SUMMARY OF EXPRESS TERMS

The proposed amendments make a number of changes to 10 NYCRR Part 425, governing the operation and payment of adult day health care (ADHC) programs in residential health care facilities. The purpose of the amendments is to enable such programs to contract and work effectively with managed long term care (MLTC) plans and coordinated care models (CCMs) as more Medicaid recipients are required to enroll in MLTC plans and CCMs. The proposed amendments also allow residential health care facilities to offer a hybrid program, in which individuals requiring ADHC services and individuals requiring only social adult day care services can both receive services in the adult day health care program space.

Section 425.1

Amendments are made to the definitions of “Registrant”, “Operating hours for an adult day health care program”, and “Visit”, and new definitions of “Care coordination model”, “Comprehensive assessment”, “Care plan”, “Hybrid option”, and “Social adult day level individual” are added.

Section 425.3

Amended to allow operators of approved ADHC programs to elect the hybrid option.

Sections 425.4, 425.5, 425.6, 425.7, 425.8, 425.10, 425.12, 425.14, and 425.16

As part of their responsibility to manage and coordinate the health care needs of their enrollees, MLTC plans and CCMs provide certain services that ADHC programs are also required to provide for their registrants. Amendments are made to these regulatory sections to avoid duplication of services with respect to ADHC registrants who are referred to the ADHC

program by an MLTC plan or CCM. In addition, section 425.6 is amended to provide for increasing the approved capacity of an ADHC program that elects the hybrid model.

Section 425.23

A new section 425.23 is added, with respect to payments to ADHC programs, to allow a MLTC plan or CCM to order less than the full range of adult day health care services for a particular enrollee, based on an enrollee's individual medical needs as determined in the comprehensive assessment performed by the MLTC plan or CCM, and to enter into reimbursement arrangements with the ADHC program operator that take into account a registrant's receipt of less than the full range of adult day health care services.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Section 363-a(2) of the Social Services Law and Section 2803(2) of the Public Health Law, Part 425 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 425

Adult Day Health Care

(Statutory Authority: Public Health Law, section 2803(2); Social Services Law, section 363-a(2))

Sec.

425.1 Definitions

425.2 Application

425.3 Changes in existing program

425.4 General requirements for operation

425.5 Adult day health care services

425.6 Admission and registrant assessment

425.7 Registrant care plan

425.8 Registrant continued-stay evaluation

425.9 Medical services

425.10 Nursing services

425.11 Food and nutrition services

425.12 Social services

425.13 Rehabilitation therapy services

425.14 Activities

425.15 Religious services and counseling

425.16 Dental services

425.17 Pharmaceutical services

425.18 Services for registrants with Acquired Immune Deficiency Syndrome (AIDS)

425.19 General records

425.20 Clinical records

425.21 Confidentiality of records

425.22 Program evaluation

425.23 Payment

425.1 Definitions. As used in this Part:

(a) *Adult day health care* is defined as the health care services and activities provided to a group of registrants with functional impairments to maintain their health status and enable them to remain in the community.

(b) *Registrant* is defined as a person:

(1) who is not a resident of a residential health care facility, is functionally impaired and not homebound, and requires supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative or palliative care or services but does not require continuous 24-hour-a-day inpatient care and services, except that where reference is made to the requirements of Part 415 of this Subchapter, the term resident as used in Part 415 shall mean registrant;

(2) whose assessed social and health care needs can satisfactorily be met in whole or in part by the delivery of appropriate services in the community setting; and

(3) who has been [admitted to] accepted by an adult day health care program based on an authorized practitioner's order or a referral from a managed long term care plan or care coordination model and [the adult day health care program's interdisciplinary] a comprehensive assessment conducted by the adult day health care program or by the managed long term care plan or care coordination model.

(c) *Program* is defined as an approved adult day health care program, located at a licensed residential health care facility or an approved extension site.

(d) *Operating hours for an adult day health care program* are defined as the period of time that the program must be open, operational, and providing services to registrants in accordance with the approval granted by the Department. [(1)] Each approved adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, and must provide, at a minimum, nutritional services in the form of at least one meal and necessary supplemental nourishment, and planned activities[,]. In addition, an ongoing assessment must be made of each registrant's health status by the adult day health care program, or by the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, in order to provide coordinated care planning, case management and other health care services as determined by the registrant's needs.

[(2) Unless otherwise permitted by the Department, each approved session will consist of the majority of registrants in attendance for at least five hours.]

(e) *Visit* is defined as an individual episode of attendance by a registrant at an adult day health care program during which the registrant receives adult day health care services in accordance with his/her care plan. A registrant's individual visit may be fewer than five hours or longer than five hours depending on the assessed needs of the registrant [but a program may only bill for one visit per registrant per day]. Registrants referred by a managed long term care plan or care coordination model will receive services as ordered by those entities in conformance with those entities' comprehensive assessment after discussion and consultation with the adult day health care program.

(f) *Registrant capacity* is defined as the total number of registrants approved by the Department for each session in a 24 hour day.

(g) *Operator of an adult day health care program* is defined as the operator of a residential health care facility that is approved by the Department to be responsible for all aspects of the adult day health care program.

(h) *Practitioner* is defined as a physician, nurse practitioner or a physician's assistant with physician oversight.

(i) *Department* means the New York State Department of Health.

(j) *Commissioner* means the Commissioner of the New York State Department of Health.

(k) *Care coordination model* means a program model that meets guidelines specified by the Commissioner that support coordination and integration of services pursuant to Section 4403-f of the Public Health Law.

(l) *Comprehensive assessment* means an interdisciplinary comprehensive assessment of a registrant completed in accordance with Section 425.6 of this Part by the adult day health care

program, or a comprehensive assessment completed by the managed long term care plan or care coordination model that referred the registrant to the adult day health care program.

(m) *Care plan* means the care plan developed in accordance with section 425.7 of this Part by the adult day health care program, or the care plan developed by the managed long term care plan or care coordination model that referred the registrant to the adult day health care program.

(n) *Hybrid Option* means the provision of services to social adult day level individuals as well as adult day health care registrants in the adult day health care program space.

(o) *Social adult day level individual* means a person who does not require the skilled nursing and medical services while attending the program described in this Part, but who is functionally impaired and will benefit from the receipt of social adult day care services. Such social adult day care services will be furnished in accordance with a written care plan and may include socialization, supervision and monitoring, personal care, and nutrition. The care plan will be developed by the adult day health care program, or by the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, in conjunction with the individual, the individuals family or if applicable, the individual's authorized representative. A social adult day level individual who has been accepted by an adult day health care program in accordance with this Part shall be a registrant for the purposes of the Part.

425.2 Application. (a) Prior to operation of an adult day health care program, the proposed operator must apply for and receive Department approval in accordance with Part 710 of this Chapter. Such application must include a description of the proposed program, including but not limited to:

(1) the need for the program, including a statement on the philosophy and objectives of the program;

(2) the range of services to be provided;

(3) the method(s) of delivery of services;

(4) physical space to be utilized and planned use thereof;

(5) number and expected characteristics of registrants to be served;

(6) a description of a typical registrant's program;

(7) personnel to be employed in the program, including qualifications;

(8) intended use of and coordination with existing community resources;

(9) financial policies and procedures;

(10) program budget;

(11) methods for program evaluation; and

(12) proximity to an identified number of potential registrants.

(b) A residential health care facility operator that has been approved by the Department to operate an adult day health care program at its primary site may provide adult day health care services at an extension site only when such use of an extension site has first been approved by the Department under the provisions of Part 710 of this Chapter.

(c) A residential health care facility operator that does not operate an adult day health care program at its primary site may provide such a program at an extension site approved by the Department for such use in accordance with section 710.1 of this Chapter if there is not sufficient suitable space within the residential health care facility to accommodate a full range of adult day health care program activities and services. The Department may conduct an on-site survey of the residential health care facility to determine whether the facility lacks suitable space for an adult day health care program.

425.3 Changes in existing program.

(a) Applications for approval of changes in the program, including but not limited to substantial changes in the physical plant, space and utilization thereof, the extent and type of services provided, and the program's registrant capacity, must be submitted to the Department in writing and must conform with the provisions of Part 710 of this Chapter.

(b) Written requests for additional program sessions must be based on the number and needs of registrants and be approved by the Department.

(c) An operator may not discontinue operation of services to registrants without:

(1) notifying each registrant and making suitable plans for alternate services for each registrant; and

(2) receiving written approval from the commissioner in accordance with Part 710 of this Chapter. The application to discontinue services must set forth the specific intended date of discontinuance and the intended plans for alternate services to registrants.

(d) The operator of an approved adult day health care program must [apply in writing to the Department for approval to run a session in which the majority of the registrants are or will be attending for fewer than five hours] notify the Department of the program's election of the hybrid option in writing thirty days before commencement of the hybrid option. Hybrid option programs may provide services to social adult day level individuals as well as adult day health care registrants in the adult day health care program space.

425.4 General requirements for operation

(a) [A residential health care facility] An operator must:

(1) provide services to registrants consistent with the requirements of this Title and Part and other applicable statutes and regulations;

(2) provide appropriate staff, equipment, supplies and space as needed for the administration of the adult day health care program in accordance with the requirements of this Part; and

(3) provide each registrant with a copy of a Bill of Rights specific to operation of the adult day health care program.

These rights include, but are not limited to:

(i) confidentiality, including confidential treatment of all registrant records;

(ii) freedom to voice grievances about care or treatment without discrimination or reprisal;

(iii) protection from physical and psychological abuse;

(iv) participation in developing the care plan; and

(v) freedom to decide whether or not to participate in any given activity.

(b) Administration. Without limiting its responsibility for the operation and management of the program, the operator must designate a person responsible for:

(1) coordinating services for registrants with services provided by community or other agency programs, including but not limited to certified home health agencies, social services agencies, clinics and hospital outpatient departments and services; provided, however, with respect to registrants referred to the adult day health care program by a managed long term care plan or care coordination model, the coordination of such services shall be the responsibility of the managed long term care plan or care coordination model; and

(2) day-to-day direction, management and administration of the adult day health care services, including but not limited to:

(i) assigning adequate and appropriately licensed personnel to be on-duty at all times when the program is in operation to ensure safe care of the registrants;

(ii) assigning and supervising activities of all personnel to ensure that registrants receive assistance in accordance with their plans of care;

(iii) ensuring supervision of direct care staff in accordance with state rules and regulation;

(iv) arranging for in-service orientation, training and staff development; and

(v) maintaining records in accordance with provisions of sections 400.2 and 415.3(d)(1) of this Subchapter.

(c) Policies and procedures for service delivery. The operator must:

(1) establish and implement written policies and procedures, consistent with the approved application for operation of the adult day health care program, concerning the rights and responsibilities of registrants, the program of services provided to registrants, use of physical

structures and equipment, and the number and qualifications of staff members and their job classifications and descriptions;

(2) ensure that written policies and procedures, consistent with current professional standards of practice, are developed and implemented for each service and are reviewed and revised as necessary;

(3) develop protocols for each involved professional discipline to indicate when the service of such discipline should be included in the registrant assessment;

(4) ensure that professional personnel are fully informed of, and encouraged to refer registrants to, other health and social community resources that may be needed to maintain the registrant in the community; provided, however, with respect to registrants referred to the adult day health care program by a managed long term care plan or care coordination model, such referrals shall be the responsibility of the managed long term care plan or care coordination model;

(5) establish and implement written policies for the storage, cleaning and disinfection of medical supplies, equipment and appliances;

(6) establish and implement written policies and procedures concerning refunds and prepayment for basic services in accordance with existing rules and regulations;

(7) establish and implement written policies and procedures concerning transfer and affiliation agreements covering registrants that are consistent with the standards specified in section 400.9 of this Subchapter; and

(8) provide in such agreement(s) reasonable assurance of assistance to each registrant in transferring to inpatient or resident status in a residential health care facility whenever the registrant is deemed by a practitioner to be medically appropriate for such care.

425.5 Adult day health care services.

(a) The operator must provide or arrange for services appropriate to each registrant in accordance with the [individual's interdisciplinary needs] comprehensive assessment conducted and [comprehensive] care plan [as] developed by the adult day health care program, or by the managed long term care plan or care coordination model that referred the registrant to the adult day health care program. At least the following program components must be available:

(1) case management[, including health education];

(2) health education;

[(2)] (3) interdisciplinary care planning;

[(3)] (4) nursing services;

[(4)] (5) nutrition;

[(5)] (6) social services;

[(6)] (7) assistance and supervision with the activities of daily living, such as toileting, feeding, ambulation, bathing including routine skin care, care of hair and nails; oral hygiene; and supervision and monitoring of personal safety, restorative rehabilitative and maintenance therapy services;

[(7)] (8) planned therapeutic or recreational activities that reflect the interests, cultural backgrounds and the communities of the registrants and provide the registrants with choices;

[(8)] (9) pharmaceutical services; and

[(9)] (10) referrals for necessary dental services and sub-specialty care.

(b) The following services may also be provided:

(1) specialized services for registrants with HIV or AIDS; and

(2) religious services and pastoral counseling.

425.6 Admission, continued stay and registrant assessment.

(a) The operator must:

(1) select, admit and retain in the adult day health care program only those persons for whom adequate care and needed services can be provided and who, according to [their] the [interdisciplinary needs] comprehensive [assessments] assessment conducted by the operator or by the managed long term care plan or care coordination model that referred the applicant to the adult day health care program, can benefit from the services and require a minimum of at least one (1) visit per week to the program;

(2) assess each applicant, unless the assessment was conducted by a managed long term care plan or care coordination model that referred the applicant to the adult day health care program, utilizing an assessment instrument designated by the Department, with such assessment addressing, at a minimum:

(i) medical needs, including the determination of whether the applicant is expected to need continued services for a period of 30 or more days from the date of the assessment. An operator may request approval by the appropriate Department regional office for an exemption, based on special circumstances, to the requirement for determining whether there is a need for continued services for 30 days or more.

(ii) use of medication and required treatment;

(iii) nursing care needs;

(iv) functional status;

(v) mental/behavioral status;

(vi) sensory impairments;

(vii) rehabilitation therapy needs, including a determination of the specific need for physical therapy, occupational therapy, speech language pathology services, and rehabilitative, restorative or maintenance care;

(viii) family and other informal supports;

(ix) home environment;

(x) psycho-social needs;

(xi) nutritional status;

(xii) ability to tolerate the duration and method of transportation to the program; and

(xiii) evidence of any substance abuse problem.

(3) register an applicant only upon appropriate recommendation from the applicant's practitioner after completion of a personal interview by appropriate program personnel;

(4) register an applicant only after determining that the applicant is not receiving the same services from another facility or agency.

(b) An individual may be registered in an adult day health care program only if his/her [admission] comprehensive assessment indicates that the program can adequately and appropriately care for the physical and emotional health needs of the individual.

(c) No individual suffering from a communicable disease that constitutes a danger to other registrants or staff may be registered or retained for services on the premises of the program.

(d) The operator may admit, on any given day, up to [10%] 30% over the approved capacity for that program with such total daily census (130% of approved capacity) being made up of social level adult day individuals where the program has exercised the hybrid option, and/or adult day health care registrants including those admitted in accordance with a comprehensive assessment completed by a managed long term care plan or care coordination model. [The average annual capacity, however, may not exceed the approved capacity of the operator's program.] Should a program's total daily census exceed 100% for a period of more than ninety consecutive days the operator must notify the Department in writing.

425.7 Registrant care plan.

(a) The operator must ensure that [:

(a)] a care plan based on the comprehensive [interdisciplinary] assessment required by this Part, [and, when applicable, a transfer or discharge plan, is developed for each registrant] whether developed by the operator or by the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, and, when applicable, a transfer or discharge plan is in place within five visits [, not to exceed] or within 30 days [, from] after registration, whichever is earlier;

(b) [each] Each registrant's care plan must [includes] include:

(1) designation of a professional person to be responsible for coordinating the care plan;

(2) the registrant's pertinent diagnoses, including mental status, types of equipment and services required, case management, frequency of planned visits, prognosis, rehabilitation potential, functional limitations, planned activities, nutritional requirements, medications and treatments, necessary measures to protect against injury, instructions for discharge or referral if applicable, orders for therapy services, including the specific procedures and modalities to be used and the amount, frequency and duration of such services, and any other appropriate item.

(3) the medical and nursing goals and limitations anticipated for the registrant and, as appropriate, the nutritional, social, rehabilitative and leisure time goals and limitations;

(4) the registrant's potential for remaining in the community; and

(5) a description of all services to be provided to the registrant by the program, informal supports and other community resources pursuant to the care plan, and how such services will be coordinated.

(c) [development] Development and modification of the care plan [is] should be coordinated with other health care providers outside the program who are involved in the registrant's care[; and].

(d) [the] The responsible persons, with the appropriate participation of consultants in the medical, social, paramedical and related fields involved in the registrant's care, must:

(1) record in the clinical record changes in the registrant's status which require alterations in the registrant care plan;

(2) modify the care plan accordingly;

(3) review the care plan at least once every six months and whenever the registrant's condition warrants and document each such review in the clinical record; and

(4) promptly alert the registrant's authorized practitioner of any significant changes in the registrant's condition which indicate a need to revise the care plan.

425.8 Registrant continued-stay evaluation. The operator, directly or through the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, must ensure that a written comprehensive assessment and evaluation is completed pursuant to section 425.6 of this Part at least once every six months for each registrant, addressing the appropriateness of the registrant's continued stay in the program, such assessment and evaluation to address, at a minimum:

(a) a reassessment of the registrant's needs, including an interdisciplinary evaluation of the resident's need for continued services;

(b) the appropriateness of the registrant's continued stay in the program;

(c) the necessity and suitability of services provided; and

(d) the potential for transferring responsibility for or the care of the registrant to other more appropriate agencies or service providers.

425.9 Medical services. The operator must, without limiting its responsibility for the operation and management of the program:

(a) assign to the operator's [residential health care facility's] medical board, medical advisory committee, medical director or consulting practitioner the following responsibilities regarding registrants of the program:

(1) developing and amending clinical policies;

(2) supervising medical services;

(3) advising the operator regarding medical and medically related problems;

(4) establishing procedures for emergency practitioner coverage, records and consultants; and

(5) establishing professional relationships with other institutions and agencies, such as general hospitals, rehabilitation centers, residential health care facilities, home health agencies, hospital outpatient departments, clinics and laboratories;

(b) ensure that medical services, including arranging for necessary consultation services, are provided to registrants of the program in accordance with sections 415.15(b)(1), (2)(ix), (3) and (4) of this Subchapter;

(c) provide or arrange for the personal, staff or other designated practitioner to obtain a medical history and a physical examination of each registrant, including diagnostic laboratory and x-ray services, as medically indicated, within six weeks before or seven days after admission to the program; provided, however, that with respect to registrants referred to the adult day health care program by a managed long term care plan or care coordination model, such medical history and record of physical examination shall be that which was most recently conducted or obtained by or through the managed long term care plan or care coordination model;

(d) ensure that the practitioner record, date and authenticate significant findings of the medical history, physical examination, diagnostic services, diagnoses and orders for treatment in the registrant's clinical records; and

(e) ensure that orders for treatment include orders for medication, diet, permitted level of physical activity and, when indicated, special orders or recommendations for rehabilitative therapy services and other adult day health care services.

425.10 Nursing services. The operator, directly or through the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, must:

(a) [provide nursing services to] evaluate the need of each registrant for nursing care on a periodic and continuing basis, but not less often than quarterly, and, when appropriate, provide [for] or authorize such care;

(b) ensure that a registered professional nurse is on-site and performs a nursing evaluation of each registrant at the time of admission to the program, unless such evaluation has been performed by the managed long term care plan or care coordination model prior to referring the registrant to the adult day health care program;

(c) ensure that for each registrant subject to the evaluation provided for in (a) and (b) of this section the findings of the nursing evaluation, the nursing care plan, and recommendations for nursing follow-up are documented, dated and signed in the registrant's clinical record;

(d) ensure that nursing services are provided to registrants under the direction of a registered professional nurse who is on-site in the adult day health care program during all hours of the program operation. Based on the care needs of the registrants, for a program located at the sponsoring licensed residential health care facility, a licensed practical nurse may provide the on-site services when a registered professional nurse is available in the nursing home or on the campus to provide immediate direction or consultation; and

(e) ensure that appropriate health education is provided to registrants and family members to provide support for the registrant and family in understanding and dealing with the registrant's health condition as it relates to his/her continued ability to reside in the community; provided, however, with respect to registrants referred to the adult day health care program by a managed long term care plan or care coordination model, such health education shall be the responsibility of the managed long term care plan or care coordination model.

425.11 Food and nutrition services. The operator must:

(a) provide nutritional services for each registrant;

(b) provide meals and nutritional supplements, including modified diets when medically prescribed, to registrants who are on the premises at scheduled meal times and, where appropriate, to registrants in their homes in accordance with the identified needs included in registrant care plans;

(c) ensure that the quality and quantity of food and nutrition services provided to registrants are in conformance with section 415.14 of this Subchapter, exclusive of the requirements specified in section 415.14(f);

(d) ensure that nutrition services are under the direction of a qualified dietitian, as defined in section 415.14 of this Subchapter; and

(e) ensure that dietary service records for the adult day health care service are maintained in conformance with sections 415.14(c)(1) and (2) of this Subchapter.

425.12 Social services. The operator must:

(a) provide social services in conformance with section 415.5(g) of this Subchapter except that the use of a full or part time social worker in an adult day health care program must be in conformance with the approved application for operation and, with respect to section 415.5(g)(2)(ii) and (iii), regular access may be directly with a master's prepared or certified social worker or through a contract which meets the provisions of section 415.26(e);

(b) ensure that psycho-social needs are assessed, evaluated and recorded, and that services are provided to meet the identified needs as part of the coordinated care plan; and

(c) ensure that staff members arrange for the use of and/or access to other community resources as needed and coordinate the needs of the registrants with services provided by the adult day health care program and other health care providers, community social agencies and other resources; provided, however, with respect to registrants referred to the adult day health care program by a managed long term care plan or care coordination model, this shall be the responsibility of the managed long term care plan or care coordination model.

425.13 Rehabilitation therapy services. The operator must:

(a) provide or arrange for rehabilitation therapy services to registrants determined through the [interdisciplinary assessments as needing] comprehensive assessment to need such services; and

(b) ensure that the rehabilitation therapy services provided are in conformance with section 415.16 of this Subchapter.

425.14 Activities. The operator, directly or through the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, must:

(a) ensure that activities are an integral part of the program, are age appropriate, and reflect the registrants' individual interests and cultural backgrounds;

(b) ensure that activities are designed to enhance registrant participation in the program, home life and the community;

(c) involve appropriate volunteers and volunteer groups in the program, unless prohibited by law;

(d) provide sufficient equipment and supplies for the operation of the activity program;

(e) provide or arrange for transportation to and from community events and outings; and

(f) ensure that activities are included as part of each [registrant's] care plan.

425.15 Religious services and counseling. If provided, religious services and counseling must be included in the registrant's care plan.

425.16 Dental services. The operator, directly or through the managed long term care plan or care coordination model that referred the registrant to the adult day health care program, must, as appropriate:

(a) provide or refer registrants for dental services; and

(b) ensure that dental services provided to registrants or for which they are referred are in conformance with the needs identified during [assessments of registrants] the comprehensive assessment.

425.17 Pharmaceutical services. The operator must:

(a) develop and implement written policies and procedures governing medications brought to the program site by registrants;

(b) ensure that pharmaceutical services, when provided for registrants, are in conformance with section 415.18 of this Subchapter, exclusive of the requirements of section 415.18(c);

(c) ensure that each registrant's drug regimen is reviewed at least once every six months by a registered pharmacist in accordance with the registrant's care plan and otherwise modified as needed following consultation with the registrant's attending practitioner. Any modification to the drug regimen must be documented in the registrant's clinical record and included as a revision to the registrant's care plan; and

(d) ensure that written policies and procedures require the pharmacist to report any irregularity in a registrant's drug regimen and recommendations to the registrant's attending practitioner and to the program coordinator, with appropriate documentation in the registrant's clinical record and care plan.

425.18 Services for registrants with Acquired Immune Deficiency Syndrome (AIDS).

(a) Applicability.

(1) This section applies to an adult day health care program approved by the commissioner pursuant to Part 710 of this Chapter as a provider of specialized services for registrants with AIDS.

(2) For purposes of these regulations, AIDS means acquired immune deficiency syndrome and other human immunodeficiency virus (HIV) related illness.

(b) General requirements. The program shall provide comprehensive and coordinated health services in accordance with this Article and requirements set forth in sections 425.9 through 425.17 of this Part. In addition, the operator must provide or make arrangements for:

(1) case management services,

(2) substance abuse services, if appropriate,

(3) mental health services,

(4) HIV prevention and counseling services,

(5) pastoral counseling,

(6) TB screening and on-going follow up, and

(7) specialized medical services including gynecology, as needed.

(c) Staffing requirements. The operator must provide or make arrangements for:

(1) specialty oversight of the AIDS program by a practitioner who has experience in the care and clinical management of persons with AIDS; and

(2) nursing services for the AIDS program under the supervision of a registered professional nurse with experience in the care and management of persons with AIDS.

425.19 General records. The operator must:

(a) maintain on the premises of the program or facility the following written records, which must be easily retrievable and must include, but not be limited to, the following:

(1) a chronological admission register consisting of a daily chronological listing of registrants admitted by name with relevant clinical and social information about each, including as a minimum, name, address, next of kin, attending practitioner, principal diagnosis, and the place from which each registrant was admitted;

(2) a chronological discharge register consisting of a daily chronological listing of registrants discharged by name, the reason for discharge and the place to which the registrant was discharged;

(3) a daily census record consisting of a summary report of the daily registrant census with cumulative figures for each month and each year; and

(4) general records in conformance with sections 415.30(e) - (o) of this Subchapter.

(b) ensure that each record includes non-medical information consisting of:

(1) all details of the referral and registration;

(2) identification of next of kin, family and sponsor;

(3) the person or persons to be contacted in the event of emergency;

(4) accident and incident reports;

(5) non-medical correspondence and papers pertinent to the registrant's participation in the program; and

(6) a fiscal record including copies of all agreements or contracts.

(c) Maintain as public information, available for public inspection, records containing copies of all financial and inspection reports pertaining to the adult day health care services that have been filed with or issued by any governmental agency for six years from the date such reports are filed or issued.

425.20 Clinical records. The operator must:

(a) provide a clinical record for each registrant in accordance with the clinical records requirements of section 415.22 of this Subchapter;

(b) ensure that all reports and information pertaining to registrant care and planning are entered promptly;

(c) ensure that all entries are dated and authenticated by the person making the entry or ordering the services;

(d) ensure that the record is kept in a place convenient for use by authorized staff; and

(e) retain intact clinical records and all other records of registrants and keep them readily accessible in a safe and secure place. Such records shall be retained safely and securely for a period of six years following discharge or cessation of operation of services. In the case of a minor, retention shall be for three years after reaching majority (18 years of age).

425.21 Confidentiality of records. The operator shall keep confidential and make available only to authorized persons all medical, social, personal and financial information relating to each registrant.

425.22 Program evaluation.

(a) Quality improvement. The operator must develop and implement a quality improvement process that provides for an annual or more frequent review of the operator's program. Such evaluation must include a profile of the characteristics of the registrants admitted

to the program, the services and degree of services most utilized, the length of stay and use rate, registrant need for care and services, and disposition upon discharge. The process must:

(1) include an evaluation of all services in order to enhance the quality of care and to identify actual or potential problems concerning service coordination and clinical performance;

(2) review accident and incident reports, registrant complaints and grievances and the actions taken to address problems identified by the process;

(3) develop and implement revised policies and practices to address problems found and the immediate and systematic causes of those problems; and

(4) assess the impact of the revisions implemented to determine if they were successful in preventing recurrence of past problems.

(b) The results of the quality improvement process must be reported to the chief executive officer, nursing home administrator or governing body.

425.23 Payment

(a) Payments to adult day health care programs by State government agencies.

(1) A program may only bill for one visit per registrant per day.

(2) The majority of registrants for whom the program receives a payment made by a government agency must be in attendance for at least five hours.

(b) Payments to adult day health care programs by managed long term care plans or care coordination models:

(1) Payments shall be made in accordance with the negotiated agreement between the adult day health care program and the managed long term care plan or care coordination model.

(2) The full range of adult day health care services shall be available to registrants with a medical need for such services. Based on a registrant's individual medical needs, as determined in the comprehensive assessment, the managed long term care plan or care coordination model may order less than the full range of adult day health care services. Nothing shall prohibit adult day health care programs and managed long term care plans or care coordination models from agreeing to reimbursement terms that reflect a registrant's receipt of less than the full range of adult day health care services.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 2803(2)(a)(v) of the Public Health Law authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to medical facilities, including nursing homes. Section 201(1)(v) of the Public Health Law and section 363-a of the Social Services Law provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

Chapter 59 of the Laws of 2011 enacted a number of provisions of the Medicaid Redesign Team (MRT). One of these provisions calls for the mandatory enrollment of additional categories of Medicaid recipients into managed long term care (MLTC) plans or other care coordination models (CCMs). The proposed regulations would amend a number of provisions in 10 NYCRR Part 425, governing the operation and payment of adult day health care (ADHC) programs in residential health care facilities, to remove regulatory obstacles to those programs transitioning from being primarily fee-for-service Medicaid providers to being providers that can contract and work effectively with MLTC plans and CCMs.

Needs and Benefits:

The proposed amendments provide that the MLTC plan or CCM that refers an enrollee to an ADHC program will be responsible for meeting certain Part 425 requirements that are currently the responsibility of the ADHC program operator, consistent with the MLTC plan's or CCM's responsibility to manage and coordinate the enrollee's health care needs. This will avoid having the ADHC program operator duplicate services that are required to be provided by MLTC plans and CCMs to their enrollees.

The proposed amendments clarify that the full range of ADHC services are available to MLTC plan and CCM enrollees with a medical need for such services. This ensures that Medicaid-covered ADHC services provided through an MLTC plan or CCM remain equal in amount, duration, and scope to ADHC services available to recipients of fee-for-service Medicaid.

However, the proposed regulations also allow an MLTC plan or CCM, based on an enrollee's individual medical needs, as determined in the comprehensive assessment performed by the MLTC plan or CCM, to order less than the full range of adult day health care services, and to enter into reimbursement arrangements with the ADHC program operator that take into account a program registrant's receipt of less than the full range of adult day health care services. The proposed rule allows MLTC plans and CCMs to order, and ADHC programs to provide, only the needed individualized services identified in the registrant's comprehensive assessment and care plan, at a negotiated price that both the MLTC plan/CCM and the ADHC program can afford.

Finally, the proposed amendments allow residential health care facilities to offer a hybrid model, in which individuals requiring ADHC services and individuals requiring only social adult day care services can both receive services in the adult day health care program space. Social adult day care services are appropriate for individuals who do not need skilled nursing and medical services, but who are functionally impaired and will benefit from the receipt of services such as socialization, supervision and monitoring, personal care, and nutrition. This will have the effect of increasing the capacity of social adult day care programs, which is currently insufficient to meet the anticipated demands of MLTC plans in certain parts of the state.

Costs to the Department, the State, and Local Government:

The proposed rule will not increase costs to the State or local governments.

Local Government Mandates:

This proposed rule will not impose any program, service, duty, additional cost or responsibility on any county, city, town, village school district, fire district or other special district.

Paperwork:

This proposed rule will not impose any additional paperwork for ADHC programs.

Duplication:

There are no duplicative or conflicting rules identified.

Alternative:

No alternatives were proposed to the Department or considered.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

ADHC programs should be able to comply with the proposed regulations when they become effective.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed rule can potentially affect 165 adult day health care (ADHC) programs across the state. It will not affect any local government entities. The proposed rule allows an ADHC program approved to operate by the State of New York to elect the hybrid option, thus permitting the program to admit and serve social adult day level and ADHC level individuals during the same period of time, in the same physical space. It also allows these programs flexibility in their operations and permits them to more effectively contract with managed long term care (MLTC) plans. Since selecting this hybrid option is voluntary on the part of any ADHC program, it is impossible to know how many of the 165 programs will be affected. They may exercise this option as MLTC is expanded across the state and their decision to do so will be based on individual program experience, the location of the program and other community-based services available in their geographic area.

Compliance Requirements:

In order to exercise the hybrid option, the ADHC program will have to notify the Department in writing, thirty days in advance of implementation that they plan to exercise this option. ADHC programs are currently required by regulation to meet certain reporting and recordkeeping requirements, and these activities will not be increased for a program that elects the hybrid option.

Professional Services:

ADHC programs currently employ, either directly or through a contract, nurses; social workers; physical, occupational and speech therapists; certified nursing assistants; activities and dietary staff. These same types of individuals will continue to be employed since any ADHC program must have a full range of services available based on the needs of the population they serve. However, programs will be able to adjust their staffing based on the mix of social level and ADHC level registrants they serve on any given day.

Compliance Costs:

There are no direct or increased compliance costs as a result of this proposed rule.

Economic and Technological Feasibility:

This proposed rule will not change how ADHC providers serve or bill for registrants for whom they receive a fee-for-service Medicaid payment. Therefore, it will not have an impact on the program's technological needs for these registrants. The number of individuals for whom a fee-for-service payment is received is likely to decrease as individuals are enrolled in MLTC plans, and thus the number of direct billings attributable to ADHC to the State will also decrease. The decrease in the number of fee-for-service registrants will have a negative economic impact on ADHC providers. This proposal will permit ADHC programs to address this by allowing them to offer social level adult day services and more effectively contract with MLTC plans. ADHC providers may have to improve their technology in order to bill and effectively communicate with the MLTC plans that they contract with, but these changes are not the result of this proposal. Any need to increase their technology, in this instance, is the result of the changes in the long term care market in general and the expansion of MLTC plans.

Minimizing Adverse Impact:

There will be no adverse impact on local government. The proposed rule is designed to allow ADHC program operations to be more flexible. Further, it will allow ADHC programs and the registrants they serve to more effectively adjust to the statutory mandate requiring the expansion of MLTC.

Small Business and Local Government Participation:

The proposal reflects the Department's collaboration with the Adult Day Health Care Council, which is a trade association representing more than 90 percent of the ADHC programs operating in New York State. Members of the Council helped develop the concept of a hybrid option and had the opportunity to contribute to and comment on the concepts presented in this proposed rule.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

All rural areas of the state in which adult day health care (ADHC) programs are located will be equally affected by this proposal. There are approximately 41 programs operating in rural counties.

Reporting, Recordkeeping and Other Compliance Requirements; Professional Services:

For ADHC programs, no new reporting, recordkeeping or other compliance requirements are being imposed as a result of this rule. The only new requirement, should an ADHC program opt to utilize the hybrid option, will be to notify the Department of that decision in writing.

Costs:

No direct costs will be imposed as a result of this rule.

Minimizing Adverse Impact:

There will be no adverse impact on rural areas. Implementation of this rule will benefit managed long term care plans expanding to rural areas that will need to include medical and social model programs in the benefit package. The rule will allow programs to increase capacity with social level registrants and serve a larger population. Implementation of the rule may prevent program closures and displacement of registrants to nursing facilities. The rule will allow for continuity of care as registrants will receive different levels of treatment in one setting.

Rural Area Participation:

The Department participated in multiple meetings with the Adult Day Health Care Council which represents more than 90 percent of the ADHC programs in the state, including the 41 programs operating in rural areas.

JOB IMPACT STATEMENT

Nature of Impact:

The statutory mandate requiring the expansion of Managed Long Term Care (MLTC) will likely have a negative impact on adult day health care (ADHC) programs. As MLTC expands, enrollment in ADHC programs as currently structured may significantly decrease. This could result in the downsizing of programs and staff, closures and displacement of the registrants. The proposed rule was designed to mitigate such an impact by providing ADHC programs flexibility in their operations and permitting them to more effectively contract with MLTC plans. The proposed rule, therefore, could prevent job loss that might otherwise occur if it is not adopted.

Categories and Numbers Affected:

The staff affected by the proposal include: nurses; certified nursing assistants; physical, occupational and speech therapists; social workers; dietary/food service workers; housekeeping and activity professionals.

Regions of Adverse Impact:

Adoption of the proposed rule will not result in an adverse impact on jobs or employment. The proposed rule permits ADHC programs to select a hybrid option through which they deliver their services. Selection of this option is voluntary, and will be based on individual program experience and choice. Therefore, it is impossible to know how many programs or which regions of the state would be affected.

Minimizing Adverse Impact:

One of the reasons the Department wishes to adopt this proposed rule is to minimize any adverse impact on ADHC registrants and programs which may result from the mandatory expansion of MLTC plans.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2800 and 2803 of the Public Health Law, Section 405.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (ii) of paragraph (8) of subdivision (a) of Section 405.4 of Part 405 is amended to read as follows:

405.4 Medical staff.

(a) Medical staff accountability. The medical staff shall be organized and accountable to the governing body for the quality of medical care provided to all patients.

* * *

(8) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(ii) for adults, severe sepsis shall mean sepsis plus at least one sign of hypoperfusion or organ dysfunction; for pediatrics, severe sepsis shall mean sepsis plus one of the following: cardiovascular organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more organ dysfunctions [or acute respiratory distress syndrome]; and

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law ("PHL") Section 2800 provides that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state . . ., the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital related services . . ."

PHL Section 2803 authorizes the Public Health and Health Planning Council ("PHHPC") to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State by promoting the efficient provision and proper utilization of high quality health services at a reasonable cost.

Needs and Benefits:

Sepsis is a range of clinical conditions caused by the body's systemic response to an infection and affects about 750,000 people in the U.S. each year. The mortality rate is alarming – between 20 percent and 50 percent – and the rate largely depends on how quickly patients are diagnosed and treated with powerful antibiotics to battle the bacteria racing through their systems.

In New York State the number of **severe** sepsis cases increased from 26,001 in 2005 to 43,608 in 2011 - an increase of 68%. Similarly, the number of sepsis cases in New York State increased from 71,049 in 2005 to 100,073 in 2011, an increase of 41%. Sepsis mortality is significant and ranges widely from one hospital to another. In New York, sepsis mortality ranges between 15% and 37%. A patient may have a greater chance of dying from sepsis if care is provided by an institution ill-prepared to deal with this illness or from providers not thoroughly trained in identifying and treating sepsis.

In response to these alarming statistics regulations were enacted effective May 1, 2013 to require all hospitals licensed to operate in New York State to have in place and implement evidence-based protocols for the early identification and treatment of severe sepsis and septic shock.

The Sepsis regulations as originally drafted included a definition of pediatric severe sepsis that was not exactly consistent with current international definition. This amendment will refine the definition to assure complete consistency. The original wording was as follows:

> "for pediatrics, severe sepsis shall mean sepsis plus two organ dysfunctions or acute respiratory distress syndrome.

Proposed revised wording is:

> "for pediatrics, severe sepsis is defined as sepsis plus one of the following: cardiovascular

organ dysfunction or acute respiratory distress syndrome (ARDS) or two or more organ dysfunctions;

There is no known opposition to this change. Physicians who specialize in pediatrics and pediatric critical care requested that this change be made to assure absolute consistency with established definitions and avoid any possible confusion on the part of hospitals and clinicians.

COSTS:

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

Existing Sepsis regulations that require all hospitals to submit evidence-based protocols for the early identification and treatment of sepsis to NYSDOH not later than December 31, 2013 are unchanged. There are no costs associated with this change. There is no impact on consumers or providers. This change assures consistency in definitions but in no way alters the intent or impact of the current regulations.

Costs to Local and State Government:

There is no fiscal impact to State or local government as a result of this regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health associated with this definition change.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

There is no additional paperwork associated with this change in wording.

Duplication:

These regulations do not duplicate any State or Federal rules and assure consistency with established and clinically accepted definitions in use throughout the Nation.

Alternative Approaches:

There are no viable alternatives. Physicians who specialize in pediatrics and pediatric critical care requested that this change be made to assure absolute consistency with established definitions and avoid any possible confusion on the part of hospitals and clinicians.

Federal Requirements:

Currently there are no federal requirements regarding the adoption of sepsis protocols or for reporting adherence to protocols or risk adjusted mortality.

Compliance Schedule:

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

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REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

The provisions of these regulations will apply to the 228 general hospitals in New York State, including 18 general hospitals operated by local governments. Three general hospitals in the State are considered small businesses. These hospitals will not be affected in any way different from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those three hospitals considered small businesses as well as the 18 hospitals operated by local governments. Compliance will require: (a) adoption of and compliance with the required sepsis protocols; (b) training staff to implement the sepsis protocols; and (c) reporting information to inform risk-adjusted sepsis mortality measures.

Professional Services:

Professional services are not anticipated to be impacted as a result of the following: (a) reporting the adoption of and compliance with the required sepsis protocols; (b) training staff to implement the sepsis protocols; and (c) reporting information to inform risk-adjusted sepsis mortality measure.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) adopting and complying with evidence-based protocols; (b) reporting information to inform risk-adjusted Sepsis mortality measures; and (c) training staff to implement the sepsis protocols. This will apply to those hospitals (three) defined as small businesses.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

Adverse impact will be minimized through the provision of time sufficient to comply with the regulations. This wording change will not impact existing requirements for facilities to develop and have in place appropriate protocols by the end of the year. Further, information to inform risk adjusted mortality measures will not have to be reported to the Department until 2014.

Small Business and Local Government Participation:

These regulations have been discussed with hospital associations that represent hospitals throughout the state, including those that are small businesses and operated by local governments, who are supportive of this initiative.

Cure Period:

These regulations do not establish a violation or penalty. Therefore, no cure period is required under State Administrative Procedure Act section 202-b(1-a).

RURAL AREA FLEXIBILITY ANALYSIS

Effect of Rule:

The provisions of these regulations will apply to general hospitals in New York State, including general hospitals located in rural areas of the State. These hospitals will not be affected in any way different from any other hospital.

Compliance Requirements:

Compliance requirements are applicable to those hospitals located in rural areas. Compliance will require: (a) adoption of and compliance with the required sepsis protocols; (b) training staff to implement the sepsis protocols; and (c) reporting information to inform risk-adjusted sepsis mortality measures.

Professional Services:

Professional services will not be impacted as a result of these regulations.

Compliance Costs:

Compliance costs associated with these regulations will be minimal and will arise as a result of: (a) adopting and complying with evidence-based protocols; (b) reporting information to inform

risk-adjusted Sepsis mortality measures; and (c) training staff to implement the sepsis protocols. This will apply to those hospitals located in rural areas of New York State.

Minimizing Adverse Impact:

Adverse impact will be minimized through the provision of time sufficient to comply with the regulations. More specifically impacted entities will have a minimum of 90 days following adoption of these regulations to have sepsis protocols in place and at least six months before information to inform risk adjusted mortality measures will have to be reported to the Department.

Rural Area Participation:

These regulations have been discussed with hospital associations that represent hospitals throughout the state, including those that are located in rural areas, who are supportive of this initiative.

JOB IMPACT STATEMENT

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

Pursuant to the authority vested in the Commissioner of Health by section 2311 of the Public Health Law, Part 23, Article 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 23.1 is amended as follows:

23.1 List of sexually [transmissible] transmitted diseases.

The following are groups of sexually [transmissible] transmitted diseases (STDs) and shall constitute the definition of sexually [transmissible] transmitted diseases for the purpose of this Part and Section 2311 of the Public Health Law:

Group A

[Treatment] Facilities referred to in section 23.2 of this part must provide diagnosis and treatment [free of charge] as provided in subdivision (c) of section 23.2 of this Part for the following STDs:

Chlamydia trachomatis infection

Gonorrhea

Syphilis

Non-gonococcal Urethritis (NGU)

Non-gonococcal (mucopurulent) Cervicitis

Trichomoniasis

Lymphogranuloma Venereum

Chancroid

Granuloma Inguinale

Group B

[Treatment] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in subdivision (d) of section 23.2 of this Part for the following STDs:

[Ano-genital warts]

Human Papilloma Virus (HPV)

Genital Herpes Simplex

Group C

[Treatment] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in subdivision (e) of section 23.2 of this Part for the following STD:

Pelvic Inflammatory Disease (PID) Gonococcal/Non-gonococcal

Group D

[Treatment] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in subdivision (f) of section 23.2 of this Part for the following STDs:

Yeast (Candida) Vaginitis

Bacterial Vaginosis

Pediculosis Pubis

Scabies

Section 23.2 is amended as follows:

Section 23.2 – [Treatment] Facilities

23.2 [Treatment] Facilities. Each health district shall provide adequate facilities either directly or through contract for the diagnosis and treatment of persons living within its jurisdiction who are infected or are suspected of being infected with STD as specified in section 23.1.

(a) Such persons shall be examined and shall have appropriate laboratory specimens taken and laboratory tests performed for those diseases designated in this Part as STDs for which such person exhibits symptoms or is otherwise suspected of being infected.

(b) The examinations and laboratory tests shall be conducted in accordance with accepted medical procedures as described in the most recent STD clinical guidelines and laboratory guidelines distributed by the New York State Department of Health.

(c) Any persons diagnosed as having any of the STDs in Group A in section 23.1 of this Part shall be treated directly in the treatment facility with appropriate medication in accordance with accepted medical procedures as described in the most recent treatment guidelines distributed by the department.

(d) Any persons diagnosed as having any of the STDs in Group B in section 23.1 of this Part must be provided treatment either directly in the treatment facility referred to in this section or through a written or electronic prescription or referral. [If treatment is provided directly, it must be provided free of charge.]

(e) Any person diagnosed as having the STD in Group C in section 23.1 of this Part may be managed by immediate referral <u>or if outpatient treatment is appropriate as indicated by accepted clinical guidelines, the person may be treated directly in the treatment facility</u>. [If outpatient treatment is appropriate as indicated by accepted clinical guidelines and is provided directly in the treatment facility referred to in this section, it must be provided free of charge.]

(f) Any person diagnosed as having any of the STDs in Group D in section 23.1 of this Part may be provided treatment directly within the treatment facility referred to in this section or through a written or electronic prescription. [If treatment is provided directly, it must be provided free of charge.]

<u>(g) Health districts shall seek third party reimbursement for these services to the greatest extent practicable, provided, however, that no board of health, local health officer, or other municipal health officer shall request or require that such coverage or indemnification be utilized as a condition of providing diagnosis or treatment services. Relevant information may be disclosed to third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services.</u>

Section 23.3 is amended as follows:

23.3 Cases treated by other providers.

(a) Every physician, <u>physician assistant,</u> licensed midwife or nurse practitioner providing (as authorized by their scope of practice) gynecological, obstetrical, genitor-urological, contraceptive, sterilization, or termination of pregnancy services or treatment, shall offer

to administer to every patient treated by such physician, physician assistant, licensed midwife or nurse practitioner, appropriate examinations or tests for STD as defined in this Part.

(b) The administrative officer or other person in charge of a clinic or other facility providing gynecological, obstetrical, genitor-urological, contraceptive, sterilization or termination of pregnancy services or treatment shall require staff of such clinic or facility to offer to administer to every resident of the State of New York coming to such clinic or facility for such services or treatment, appropriate examinations or tests for the detection of sexually [transmissible] transmitted diseases.

A new section 23.4 is added as follows:

23.4 Minors.

When a health care provider diagnoses, treats or prescribes for a minor, without the consent or knowledge of the parents or guardian as permitted by section 2305 of the public health law, neither medical nor billing records shall be released or in any manner be made available to the parent or guardian of such minor without the minor patient's permission.

In addition to being authorized in accordance with Public Health Law §2305 to diagnose, treat or prescribe for a person under the age of eighteen years without the consent or knowledge of the parents or guardian of such person where the individual is infected with a sexually transmitted disease, or has been exposed to infection with a sexually transmitted disease, a health care practitioner may (as authorized by their scope of

practice) render medical care related to the prevention of a sexually transmitted disease without the consent or knowledge of the parents or guardian.

Section 23.5 is amended as follows:

23.5 Expedited partner therapy for *chlamydia trachomatis* infection.

(a) Definitions. As used in this section:

(1) "Expedited Partner Therapy" or "EPT" means a practice whereby a health care practitioner chooses to provide a patient with either antibiotics intended for the patient's sexual partner or partners or written prescriptions for antibiotics for the sexual partner or partners to be delivered by the patient to the sexual partner or partners for treatment of exposure to *Chlamydia trachomatis*.

(2) "Health care practitioner" means a physician, midwife, nurse practitioner, physician assistant, or other person who is authorized under Title 8 of the Education Law to diagnose and prescribe drugs for *Chlamydia trachomatis,* acting within his or her lawful scope of practice.

(b) Liability. A health care practitioner who reasonably and in good faith renders expedited partner therapy in accordance with section 2312 of the Public Health Law and this section, and a pharmacist who reasonably and in good faith dispenses drugs pursuant to a prescription written in accordance with section 2312 of the Public Health Law and this section, shall not be subject to civil or criminal liability or be deemed to have engaged in unprofessional conduct.

(c) Eligibility criteria for EPT. EPT shall:

(1) be provided only for the partner or partners of a patient diagnosed with

Chlamydia trachomatis infection; and

(2) not be provided for any partner or partners, when the patient with *Chlamydia trachomatis* infection seen by the health care practitioner is found to be concurrently infected with gonorrhea, [or,] syphilis, or HIV. Contraindication is noted in people who are co-infected with HIV.

(d) Educational material requirements for patients provided with EPT. Each patient provided with antibiotics or a prescription in accordance with this section must be given informational materials for the patient to give to his or her sexual partner or partners. Each patient shall be counseled by his or her health care practitioner to inform his or her partner or partners that it is important to read the information contained in the materials prior to the partner or partners taking the medication.

The materials shall:

(1) encourage the partner to consult a health care practitioner for a complete sexually transmitted infection evaluation as a preferred alternative to EPT and regardless of whether they take the medication;

(2) disclose the risk of potential adverse drug reactions, including allergic reactions, and the possibility of dangerous interactions between the patient-delivered therapy and other medications that the partner may be taking;

(3) inform the partner that he or she may be affected by other sexually transmitted infections that may be left untreated by the delivered medicine;

(4) inform the partner that if symptoms of a more serious infection are present (such as abdominal, pelvic, or testicular pain, fever, nausea or vomiting) he or she should seek medical care as soon as possible;

(5) recommend that a partner who is or could be pregnant should consult a health care practitioner as soon as possible;

(6) instruct the patient and the partner to abstain from sexual activity for at least seven days after treatment of both the patient and the partner in order to decrease the risk of recurrent infections;

(7) inform a partner who is at high risk of co-morbidity with HIV infection that he or she should consult a health care practitioner for a complete medical evaluation including testing for HIV and other sexually transmitted infections; and

(8) inform the patient and the partner how to prevent repeated chlamydia infection.

(e) Prescription format. Whenever a health care practitioner provides EPT through the use of a prescription:

(1) the designation "EPT" must be written in the body of the prescription form above the name of the medication and the dosage for all prescriptions issued;

(2) if the name, address, and date of birth of the sexual partner are available, this should be written in the designated area of the prescription form; and

(3) if the sexual partner's name, address, and date of birth are not available, the written designation "EPT" shall be sufficient for the pharmacist to fill the prescription.

(f) Reporting of cases of *Chlamydia trachomatis* by health care providers.

(1) This section shall not affect the obligation to report individual cases and suspected cases of *Chlamydia trachomatis* imposed by Part 2 of this Chapter.

(2) Reports of cases of *Chlamydia trachomatis* who are provided with EPT shall include the added designation of "EPT" plus the number of sexual partners for whom a prescription or medication was provided.

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

October 3, 2013

B. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Continuing Care Retirement Community - Construction **Exhibit #5**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131304 C	Peconic Landing at Southold (Suffolk County)	Contingent Approval

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

October 3, 2013

B. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Upstate Request for Applications – Certified Home Health Agencies – Construction **Exhibit #6**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131186 C	HCR (Clinton County) Mr. Booth – Interest Ms. Hines - Interest	Approval
2.	131187 C	HCR (Madison County) Mr. Booth – Interest Ms. Hines - Interest	Approval
3.	131188 C	HCR (Schoharie County) Mr. Booth – Interest Ms. Hines - Interest	Contingent Approval
4.	121267 C	TLC Health Network-Lake Shore Hospital (Chautauqua County) Mr. Booth – Interest	Approval

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

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

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

Recommendations

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

Office of Health Systems Management

Approval conditional upon:
1. 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 submitted an executed lease agreement for the site that will serve all counties.

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).

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	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

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

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

Recommendations

Health Systems Agency

The HSA has no comment on 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.

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 submitted an executed lease rental agreement for a site that will serve all the counties.

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).

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	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

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, speech language pathology, medical supplies, equipment and appliances.

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, speech language pathology, medical supplies, equipment and appliances.

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

October 3, 2013

C. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct **Exhibit #7**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132025 E	White Plains Hospital Center (Westchester County)	Contingent Approval
2.	132026 E	Northern Westchester Hospital (Westchester County)	Contingent Approval
3.	132027 E	Lawrence Hospital Center (Westchester County)	Contingent Approval
4.	132028 E	Phelps Memorial Hospital (Westchester County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct **Exhibit #8**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132056 E	Eye Surgery Center of Westchester (Westchester County)	Approval

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #9**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	062287 E	SDTC – The Center for Discovery Incorporated (Sullivan County)	Contingent Approval

2.	131237 E	B&L Health, Inc. d/b/a Allhealth D&TC (Kings County)	Contingent Approval
3.	131258 B	AIDS Healthcare Foundation (Kings County)	Contingent Approval
4.	131341 E	PALA Community Care, LLC d/b/a PALA Community Care (Kings County)	Contingent Approval

Residential Health Care Facility – Establish/Construct **Exhibit #10**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131195 E	River Ridge Operating, LLC d/b/a River Ridge Living Center (Montgomery County)	Contingent Approval

Certificate of Incorporation **Exhibit #11**

Applicant	E.P.R.C. Recommendation
The Hazel Thomas Holder Lung Foundation, Inc.	Approval

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

Applicant	E.P.R.C. Recommendation
The Foundation of St. Mary's Hospital at Amsterdam, Inc.	Approval

Certificate of Dissolution **Exhibit #13**

Applicant	E.P.R.C. Recommendation
The Linden Foundation, Inc.	Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #14**

Number	Applicant/Facility	E.P.R.C. Recommendation
2071-L	Home Life Health Care, LLC d/b/a Alvita Care (Kings, Bronx, Queens, Richmond, New York and Westchester Counties)	Contingent Approval
2001-L	Effective Home Care, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2090-L	Merchant Care Services, Inc. d/b/a BrightStar of White Plains (Bronx and Westchester Counties)	Contingent Approval
1615-L	Universal Home Care Agency of New York, Inc. (Bronx, Westchester, Kings, New York and Queens Counties)	Contingent Approval
2229-L	The Pavilion at Vestal, LLC (Broome County)	Contingent Approval

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.

Stellaris was established in 1996 in order to meet the rapidly developing health care and managed care environment. The need to streamline various operations to reduce costs, enhance efficiencies and improve quality were the driving forces. At the time of the formation of Stellaris, community hospitals were reconsidering their "stand alone" status and seeking alignments/affiliations with other community hospitals and/or hospital systems. The competition represented by the evolving alignments/affiliations necessitated the four "Stellaris" hospitals to entertain the same considerations and to determine how best to position themselves to continue their service to their communities and to offer those services in an environment of rapidly evolving technology.

Stellaris' recent experience has consisted of joint efforts to reduce costs and improve quality while assisting members in transitioning from a traditional "fee-for-service" environment. Stellaris has provided its members with joint purchasing, coordinated efforts to create a high level medical record system, and achieve meaningful use with health I.T., clinical quality improvement initiatives and increased revenues based upon meeting quality metrics. However, and notwithstanding these successful efforts, recent challenges and expansions of hospital networks and systems (especially within the Westchester area and environs) have led the four hospitals to determine (each independently) that a different approach to achieving sustainability and growth has become necessary.

Each Hospital, after careful and long consideration, has determined that a new direction is needed and, as noted above, based in large part on the development of large hospitals systems and networks within the Metropolitan area and the expansion of those hospitals and systems into Westchester County. In addition, the problems faced by these and many other community hospitals regarding access to capital, affording new technologies and meeting the challenges of reduced reimbursements and health care reform (the ACA), as well as population centered health management have led the Hospitals to conclude that a system of community hospitals is not best suited to meet such challenges.

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:

<u>Inpatient</u>	
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%

<u>Outpatient</u>	
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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to disestablish HealthStar, Inc. d/b/a Stellaris Health Network as an active parent and co-operator and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132025 E	White Plains Hospital Center

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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.

Stellaris was established in 1996 in order to meet the rapidly developing health care and managed care environment. The need to streamline various operations to reduce costs, enhance efficiencies and improve quality were the driving forces. At the time of the formation of Stellaris, community hospitals were reconsidering their "stand alone" status and seeking alignments/affiliations with other community hospitals and/or hospital systems. The competition represented by the evolving alignments/affiliations necessitated the four "Stellaris" hospitals to entertain the same considerations and to determine how best to position themselves to continue their service to their communities and to offer those services in an environment of rapidly evolving technology.

Stellaris' recent experience has consisted of joint efforts to reduce costs and improve quality while assisting members in transitioning from a traditional "fee-for-service" environment. Stellaris has provided its members with joint purchasing, coordinated efforts to create a high level medical record system, and achieve meaningful use with health I.T., clinical quality improvement initiatives and increased revenues based upon meeting quality metrics. However, and notwithstanding these successful efforts, recent challenges and expansions of hospital networks and systems (especially within the Westchester area and environs) have led the four hospitals to determine (each independently) that a different approach to achieving sustainability and growth has become necessary.

Each Hospital, after careful and long consideration, has determined that a new direction is needed and, as noted above, based in large part on the development of large hospitals systems and networks within the Metropolitan area and the expansion of those hospitals and systems into Westchester County. In addition, the problems faced by these and many other community hospitals regarding access to capital, affording new technologies and meeting the challenges of reduced reimbursements and health care reform (the ACA), as well as population centered health management have led the Hospitals to conclude that a system of community hospitals is not best suited to meet such challenges.

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to disestablish HealthStar Network, Inc. d/b/a Stellaris Health Network as an active parent and co-operator , and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132026 E	Northern Westchester Hospital

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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.

Stellaris was established in 1996 in order to meet the rapidly developing health care and managed care environment. The need to streamline various operations to reduce costs, enhance efficiencies and improve quality were the driving forces. At the time of the formation of Stellaris, community hospitals were reconsidering their “stand alone” status and seeking alignments/affiliations with other community hospitals and/or hospital systems. The competition represented by the evolving alignments/affiliations necessitated the four “Stellaris” hospitals to entertain the same considerations and to determine how best to position themselves to continue their service to their communities and to offer those services in an environment of rapidly evolving technology.

Stellaris’ recent experience has consisted of joint efforts to reduce costs and improve quality while assisting members in transitioning from a traditional “fee-for-service” environment. Stellaris has provided its members with joint purchasing, coordinated efforts to create a high level medical record system, and achieve meaningful use with health I.T., clinical quality improvement initiatives and increased revenues based upon meeting quality metrics. However, and notwithstanding these successful efforts, recent challenges and expansions of hospital networks and systems (especially within the Westchester area and environs) have led the four hospitals to determine (each independently) that a different approach to achieving sustainability and growth has become necessary.

Each Hospital, after careful and long consideration, has determined that a new direction is needed and, as noted above, based in large part on the development of large hospitals systems and networks within the Metropolitan area and the expansion of those hospitals and systems into Westchester County. In addition, the problems faced by these and many other community hospitals regarding access to capital, affording new technologies and meeting the challenges of reduced reimbursements and health care reform (the ACA), as well as population centered health management have led the Hospitals to conclude that a system of community hospitals is not best suited to meet such challenges.

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

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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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to disestablish HealthStar, Inc. d/b/a Stellaris Health Network as an active parent and co-operator, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132027 E	Lawrence Hospital Center

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #132028-E

Phelps Memorial Hospital

County: **Westchester County**
Purpose: **Establishment**
Program: **Hospital**
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.

Stellaris was established in 1996 in order to meet the rapidly developing health care and managed care environment. The need to streamline various operations to reduce costs, enhance efficiencies and improve quality were the driving forces. At the time of the formation of Stellaris, community hospitals were reconsidering their "stand alone" status and seeking alignments/affiliations with other community hospitals and/or hospital systems. The competition represented by the evolving alignments/affiliations necessitated the four "Stellaris" hospitals to entertain the same considerations and to determine how best to position themselves to continue their service to their communities and to offer those services in an environment of rapidly evolving technology.

Stellaris' recent experience has consisted of joint efforts to reduce costs and improve quality while assisting members in transitioning from a traditional "fee-for-service" environment. Stellaris has provided its members with joint purchasing, coordinated efforts to create a high level medical record system, and achieve meaningful use with health I.T., clinical quality improvement initiatives and increased revenues based upon meeting quality metrics. However, and notwithstanding these successful efforts, recent challenges and expansions of hospital networks and systems (especially within the Westchester area and environs) have led the four hospitals to determine (each independently) that a different approach to achieving sustainability and growth has become necessary.

Each Hospital, after careful and long consideration, has determined that a new direction is needed and, as noted above, based in large part on the development of large hospitals systems and networks within the Metropolitan area and the expansion of those hospitals and systems into Westchester County. In addition, the problems faced by these and many other community hospitals regarding access to capital, affording new technologies and meeting the challenges of reduced reimbursements and health care reform (the ACA), as well as population centered health management have led the Hospitals to conclude that a system of community hospitals is not best suited to meet such challenges.

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to disestablish HealthStar, Inc. d/b/a Stellaris Health Network as an active parent and co-operator, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132028 E	Phelps Memorial Hospital

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer a total of 20.25% stock of two existing shareholders, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132056 E	Eye Surgery Center of Westchester

APPROVAL CONTINGENT UPON:

N/A

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project # 062287-E
SDTC - The Center for Discovery Incorporated

County:	**Sullivan**	*Program:*	**Diagnostic and Treatment Center**
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 a NYS Office for People with Developmental Disabilities (OPWDD) 2006 Consolidated Fiscal Report audit, finalized September 12, 2013. The audit indicates there are disallowances totaling $823,057.60. The disallowance should not unduly impact the financial feasibility or 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 a photocopy of the applicant's Certificate of Incorporation and any amendments thereto, which is acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's bylaws, which is acceptable to the Department.[CSL]
3. 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.

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, 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.

The applicant is also subject to a NYS Office for People with Developmental Disabilities (OPWDD) 2006 Consolidated Fiscal Report audit, finalized September 12, 2013. The audit indicates there are disallowances totaling $823,057.60. The disallowance should not unduly impact the financial feasibility or the applicant.

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request approval for indefinite life for project number 002322, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
062287 E	SDTC – The Center for Discovery Incorporated

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's Certificate of Incorporation and any amendments thereto, which is acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's bylaws, which is acceptable to the Department.[CSL]
3. 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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer ownership via a stock transfer of Allhealth D&T Center Brooklyn2 and two extension clinics, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131237 E	B&L Health, Inc. d/b/a Allhealth D&TC

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 475 Atlantic Avenue, downtown Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131258 B	AIDS Healthcare Foundation

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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:

<u>Name</u>		
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish PALA Community Care, LLC d/b/a PALA Community Care as the new operator of the Brooklyn Medcare site only, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131341 E	PALA Community Care, LLC d/b/a PALA Community Care

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]

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish River Ridge Operating, LLC d/b/a River Ridge Living Center as the operator of River Ridge Living Center, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131195 E	River Ridge Operating, LLC d/b/a River Ridge Living Center

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: 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: 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 and Health Planning 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 and Health Planning Council pursuant to Public Health Law 2801-a(1) and (6).

In addition to the proposed Certificate of Incorporation, the following documents and information are attached in support of the Foundation's request for approval.

1) 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.

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.

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.

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 conflict 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

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of October, 2013, approves the filing of the Certificate of Incorporation of The Hazel Thomas Lung Foundation, Inc., dated April 26, 2013.

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.

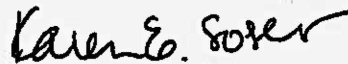
2. Amending the purposes section in the Foundation's certificate of incorporation to (a) replace references to the Hospital's old name with references to its new name, (b) identify the most recent version of the Internal Revenue Code, and (c) remove reference to the Foundation having a sole member, which 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

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

{00692544}

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:

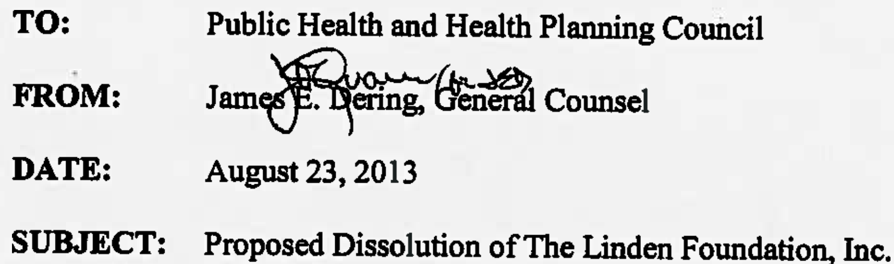
Karen E. Sosler, Esq.
Iseman, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, NY 12203

<u>RESOLUTION</u>

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of October, 2013, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Foundation of St. Mary's Hospital at Amsterdam, Inc., dated February 19, 2013.

STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M



TO:	Public Health and Health Planning Council
FROM:	James E. 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

RECEIVED
MAY 31 2013
NYS DEPARTMENT OF HEALTH
DIVISION OF LEGAL AFFAIRS
BUREAU OF HOUSE COUNSEL

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.

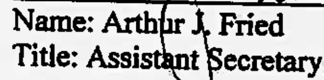
4. Within ten (10) days after the authorization of the Plan of Dissolution by the Board of Directors of the Foundation and the sole member of the Foundation, a certified copy of the Plan of Dissolution shall be filed with the Attorney General of the State of New York pursuant to Section 1002(d) of the 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

FIRM:19146554v3

--- X

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.	:	

--- X

DRAFT

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

<u>RESOLUTION</u>

RESOLVED, that the Public Health and Health Planning Council, on this 3rd day of October, 2013, approves the filing of the Certificate of Dissolution of The Linden Foundation, Inc., dated as attached.

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:	The Pavilion at Vestal, LLC
Address:	Vestal
County:	Broome
Structure:	Limited Liability Company
Application Number:	2229-L

Description of Project:

The Pavilion at Vestal, LLC, a Limited Liability Company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This application is requesting approval to establish a licensed home care services agency (LHCSA) associated with a new Assisted Living Program (ALP). This LHCSA will be associated with The Pavilion at Vestal, LLC ALP.

The members of The Pavilion at Vestal, LLC comprise the following individuals:

Uri Koenig, CPA, 60.0%
Accountant, JH Koenig & Co.

Affiliations:

2006 – present:	Bridgewater Center for Rehabilitation and Nursing
2008 – present:	Pine Valley Center for Rehabilitation and Nursing
2011 – present:	Highland Park Rehabilitation and Nursing Center
2011 – present:	Hudson Park Rehabilitation and Nursing Center
2011 – present:	Vestal Park Rehabilitation and Nursing Center
2011 – present:	Chestnut Park Rehabilitation and Nursing Center
2011 – present:	Cortland Park Rehabilitation and Nursing Center
2011 – present:	Colonial Park Rehabilitation and Nursing Center
2012 – present:	Central Park Rehabilitation and Nursing Center
2012 – present:	Riverside Center for Rehabilitation and Nursing (Receiver)
2012 – present:	Capstone Center for Rehabilitation and Nursing (Receiver)

Efraim Steif, NHA, 39.9%
President, FRS Healthcare Consultants, Inc.

Affiliations:

2003 – 2006:	Westchester Center for Rehabilitation and Nursing (Receiver)
2004 – present:	Pine Valley Center for Rehabilitation and Nursing
2005 – present:	Bridgewater Center for Rehabilitation and Nursing
2008 – present:	Central Park Rehabilitation and Nursing Center
2009 – 2010:	Riverside Manor (Receiver)
2011 – present:	Chestnut Park Rehabilitation and Nursing Center
2011 – present:	Cortland Park Rehabilitation and Nursing Center
2011 – present:	Colonial Park Rehabilitation and Nursing Center
2011 – present:	Hudson Park Rehabilitation and Nursing Center
2011 – present:	Vestal Park Rehabilitation and Nursing Center
2011 – present:	Highland Park Rehabilitation and Nursing Center
2012 – present:	Riverside Center for Rehabilitation and Nursing (Receiver)
2012 – present:	Capstone Center for Rehabilitation and Nursing (Receiver)

David Camerota, NHA, 0.1%
Administrator, Central Park Rehabilitation and Nursing Center

Affiliations:

2011 – present:	Colonial Park Rehabilitation and Nursing Center
2011 – present:	Chestnut Park Rehabilitation and Nursing Center
2011 – present:	Cortland Park Rehabilitation and Nursing Center
2011 – present:	Highland Park Rehabilitation and Nursing Center
2011 – present:	Hudson Park Rehabilitation and Nursing Center
2011 – present:	Vestal Park Rehabilitation and Nursing Center
2011 – present:	Pine Valley Center for Rehabilitation and Nursing
2012 – present:	Central Park Rehabilitation and Nursing Center
2012 – present:	Capstone Center for Rehabilitation and Nursing (Receiver)
2012 – present:	Riverside Center for Rehabilitation and Nursing (Receiver)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Efraim Steif, NHA license #04491, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of Professional Credentialing has indicated that David Camerota, NHA license #04675, holds a NHA license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The applicant proposes to serve the residents of Broome County from an office located at
1501 Route 26 South, Vestal, New York 13850.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Nutrition	Housekeeper	

A review of the operations of the following facilities for the time periods indicated was performed as part of this review:

Westchester Center for Rehabilitation and Nursing (2003 – 2006)
Pine Valley Center for Rehabilitation and Nursing (2004 – present)
Bridgewater Center for Rehabilitation and Nursing (2005 – present)
Central Park Rehabilitation and Nursing Center (2012 – present)
Riverside Manor (2009 – 2010)
Chestnut Park Rehabilitation and Nursing Center (2011 – present)
Cortland Park Rehabilitation and Nursing Center (2011 – present)
Colonial Park Rehabilitation and Nursing Center (2011 – present)
Hudson Park Rehabilitation and Nursing Center (2011 – present)
Vestal Park Rehabilitation and Nursing Center (2011 – present)
Highland Park Rehabilitation and Nursing Center (2011 – present)
Riverside Center for Rehabilitation and Nursing (2012 – present)
Capstone Center for Rehabilitation and Nursing (2012 – present)

Bridgewater Center for Rehabilitation and Nursing was fined four thousand dollars ($4,000.00) pursuant to a stipulation and order dated May 29, 2013 for surveillance findings of July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.

The information provided by the Bureau of Quality Assurance and Surveillance has indicated that the nursing homes reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Assisted Living Surveillance has indicated that the assisted living residence reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency
Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department

Recommendation: Contingent Approval
Date: September 6, 2013

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

October 3, 2013

C. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

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

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132057 E	Queens Endoscopy ASC, LLC (Allegany County)	Approval

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #16**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131329 E	Planned Parenthood of Central and Western New York, Inc. (Erie County) Mr. Booth - Interest	Contingent Approval

Dialysis Services – Establish/Construct **Exhibit #17**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132065 E	Plattsburgh Associates, LLC (Clinton County) Dr. Bhat – Interest Mr. Booth - Interest	Contingent Approval

Residential Health Care Facility – Establish/Construct **Exhibit #18**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131107 E	JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center (Erie County) Mr. Booth – Interest Mr. Fensterman - Recusal	Contingent Approval
2.	131120 E	Essex Operations Associates, LLC d/b/a Essex Center for Rehabilitation and Healthcare (Essex County) Mr. Booth – Interest Mr. Fensterman - Recusal	Contingent Approval
3.	131193 E	Washington Operating Associates LLC d/b/a Washington Center for Rehabilitation and Healthcare (Washington County) Dr. Bhat – Recusal Mr. Fensterman – Recusal	Contingent Approval
4.	132079 E	Auburn Senior Services, Inc. (Cayuga County) Mr. Booth - Interest	Contingent Approval
5.	132093 B	Auburn Senior Services, Inc. (Cayuga County) Mr. Booth - Interest	Contingent Approval

Certified Home Health Agencies – Establish/Construct **Exhibit #19**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131281 E	L. Woerner, Inc. d/b/a HCR (Washington County) Ms. Hines - Interest	Contingent Approval

HOME HEALTH AGENCY LICENSURES **Exhibit #20**

Number	Applicant/Facility	E.P.R.C. Recommendation
2242-L	Mount View Assisted Living, Inc. (Niagara County) Mr. Booth - Interest	Contingent Approval

Public Health and Health Planning Council

Project # 132057 E
Queens Endoscopy ASC, LLC

County: **Queens County**
Purpose: **Establishment**
Program: **Ambulatory Surgery Center**
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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer a total of 29.04% of the Center's membership interest to three new members and remove two individuals members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132057 E	Queens Endoscopy ASC, LLC

APPROVAL CONTINGENT UPON:

N/A

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to merge Planned Parenthood of Rochester/Syracuse Region and Planned Parenthood of Western New Yew with the surviving entity to be renamed Planned Parenthood of Central and Western New York, Inc. and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131329 E	Planned Parenthood of Central and Western New York

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Plattsburgh Associates, LLC as the operator of a renal dialysis extension clinic currently operated by Champlain Valley Physicians Hospital Medical Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132065 E	Plattsburgh Associates, LLC

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project # 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, approval 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center as the new operator of Fiddlers Green Manor Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131107 E	JSSG Healthcare, LLC d/b/a Fiddlers Green Manor Rehabilitation and Nursing Center

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily limited to, ways in which the facility will:
   a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
   b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
   c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
   d) Submit an annual report for two years to the DOH, which demonstrates substantial progress with the 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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project # 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Essex Operations Associates, LLC d/b/a Essex Center for Rehabilitation and Healthcare as the new operator of Horace Nye Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131120 E	Essex Operations Associates, LLC d/b/a Essex Center for Rehabilitation and Healthcare

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to 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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project # 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.

Programmatic Analysis

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.

Financial Analysis

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Washington Operating Associates, LLC d/b/a Washington Center for Rehabilitation and Healthcare as the new operator of Pleasant Valley, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131193 E	Washington Operating Associates, LLC d/b/a Washington Center for Rehabilitation and Healthcare

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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

Contingency 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.

The projected sensitized budget deficit of $641,746 during the transition period, will be financed through available cash and Loretto Management Corporation, Inc. (active parent)financial assistance.

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. 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]
7. Submission of an executed lease agreement acceptable to the Department. (BFA)

Approval conditional upon:

1. The project must be completed within 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. Upon completion of construction associated with project 132093, the 80 RHCF beds currently certified for Cayuga County Nursing Home located at 7451 County House Road, Auburn, NY are to be transferred to the expanded RHCF at 3 St. Anthony Street, Auburn, NY, decertifying RHCF services at 7451 County House Road. [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

Operating Budget

The applicant has submitted an operating budget, in 2013 dollars, for the County facility when the Mercy facility is under construction; summarized below:

Medicaid	$3,723,208
Medicare	894,250
Private Pay	1,636,493
Other Revenue	169,375
Total Revenues	$6,423,326
Expenses:	
Operating	$6,682,640
Capital	152,202
Total Expenses	$6,834,842
Excess of Revenues over Expenses	($411,516)
Utilization: (patient days)	28,105
Occupancy	96.25%

Adjusted Net Revenue ($230,230) sensitized - Medicaid adjustment ($641,746)

Utilization broken down by payor source for the County beds when the Mercy facility is under construction; is summarized below:

Medicaid	71.00%
Private Pay	20.00%
Medicare	9.00%

Transfer Agreement

The applicant has submitted an executed transfer agreement for the acquisition of the nursing home, summarized below:

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

Lease Agreement Termsheet

Lessee	Auburn Senior Services, Inc.
Lessor	Cayuga County
Period	Commence as of date of change of ownership and authorization of Auburn to be new operator. Terms ends when all construction is finalized at 3 St. Anthony Street, Auburn, operator agreement finalized for new location, the transfer of all residents residing at 7451 County House Road.
Terms	Auburn responsible for all direct capitalized costs, all maintenance and upkeep, all capitalized movable equipment, agreement to review and adjust payment terms to assure such terms are appropriate and not materially adverse either party.
Exclusion	All costs, services or work associated with any build out or capital/building improvements, other than for any necessary depreciation and debt service thereon.
Rent	Monthly $10,500 ($126,000 annualized)

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. Working capital requirements, estimated at two months expenses of year one, which is $1,139,240, are available as shown on Attachment C.

Year one (2014) budget shows a loss of $411,516. In the event the Medicaid rate for 2014 is not raised to 300 bed rate, losses will increase by $230,230 for this facility totaling $641,746. Losses during the construction/transition period are budgeted for through available working capital. (Attachment C)

The applicant presents a transition year budget for 2014. Auburn Senior Services, Inc. will operate the Cayuga County NH for about 15 months, during the construction and renovation of the Mercy Health NH. When completed, the former Mercy Health NH will be a 300 bed NH operated by Auburn. The projected year one losses for this facility are $411,516 for 2014. The projected loses during Auburn's operations of the renovated Mercy Health Nursing Home (CON # 132093-B during renovations in 2014) are $818,981.

Therefore, the total losses for the two facilities in 2014 are $1,230,497, of which approximately $578,512 is a cash loss. The 2014 budget projections assume Medicaid rate increase based on a combined 300 bed NH. If the rate increase is not forthcoming, until the full implementation of the single 300 bed facility, then losses for 2014 will increase by approximately $230,230 for this facility. Therefore, the applicant would show additional net losses of approximately $1,251,909 in 2014 for the reconstructed former Mercy Health Nursing Home. The total Medicaid sensitized revenue loss for the two facilities would, therefore, be an additional $1,482,139. The sensitized transition period (2014) budget deficit for both this project and 132093-B, is $2,712,636. The sensitized 2014 transition budget appears reasonable.

Auburn's 2014 through 2018 pro-forma balance statement (Attachment C) show that the applicant will have in excess of $2.2m cash, with net assets of $10.2m on day one 2014. Additionally, if needed the applicant indicates the active parent has the ability to defer its monthly administrative service payment (approximately $60,000 per month) as well as its dietary service fees provided by an entity controlled by its active parent. (Approximately $160,000 per month)

Presented as 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. Cayuga County will proceed with fulfilling the objectives of the HEAL 21 grant with Mercy Health & Rehabilitation Center and decertify 17 beds in the County, and a new entity will be created.

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; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent 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.
BFA Attachment C	Auburn Senior Services – Pro Foma statement (2014-2018)
BFA Attachment D	Auburn Senior Services at Cayuga – Pro Forma 2014 cash flow statement
BFA Attachment E	Financial Summary – Loretto Management Corporation, Inc. - 2012

CON#132079

BFA Attachment A

	2012	2011	2010
CURRENT ASSETS	$4,867,140	$4,428,526	$3,666,225
FIXED ASSETS	1,000,148	955,759	947,163
CURRENT LIABILITIES	1,097,126	446,770	426,778
LONG TERM LIABILITIES	3,118,929	2,261,668	1,682,610
NET ASSETS	$1,651,233	$2,675,847	$2,504,000
REVENUES	$7,350,272	$7,971,234	$7,074,033
EXPENSES	8,381,506	7,804,648	7,530,935
EXCESS OF REVENUES OVER EXPENSES	($1,031,234)	$166,586	($456,902)
NUMBER OF BEDS	80	80	80
UTILIZATION:			
MEDICAID	75.00%	74.54%	70.68%
MEDICARE	11.22%	10.88%	9.79%
PRIVATE PAY	13.78%	14.58%	19.53%
OCCUPANCY	95.72%	94.67%	95.40%

Project #132079
BFA Attachment B

Cayuga County Nursing Home
Financial Position

	Month ended June 30, 2013
ASSETS	
Cash & Investments	1,902,176
Accounts Receivable	2,076,506
Other Current Assets	140,646
Total Current Assets	4,119,328
Property, Plant & Equipment, Net	899,107
Cash Held For Residents	37,487
Total Long Term Assets	37,487
Total Assets	5,055,922
LIABILITIES & NET POSITION	
Trade Payables & Accrued Expenses	3,087,439
Total Current Liabilities	3,087,439
Cash Held for Residents	36,526
Total Long Term Liabilities	36,526
Net Position	1,651,233
Net Income (Loss)	280,724
Total Net Position	1,931,957
Total Liabilities & Net Position	5,055,922

Cayuga County Nursing Home
Income Statement

	Month Ended June 30, 2013	Year to Date June 30, 2013
Resident Revenue	608,685	3,291,769
Other non operating revenue	151	1,773
Total Revenue	608,836	3,293,542
Salaries / Wages	229,171	1,274,921
Employee Benefits	80,427	565696
Purchased Services	41,876	639713
Supplies and other expenses	52,977	407634
Utilities	4,954	48098
Depreciation	64,514	64514
Bad Debts	-	12242
Total Expenses	473,919	3,012,818
Net Income (Loss)	134,917	280,724

Project #132079
BFA Attachment C

Auburn Senior Services, Inc.
Projected Financial Statements for the Years
Ending 2011 thru 2018

Projected Statements of Financial Condition	Actual 2011	Mercy only Actual 2012	Projection 2013	Projection 2014 (YR-1)	Projection 2015 (YR1)	Projection 2016 (YR2)	Projection 2017 (YR3)	Projection 2018 (YR4)
Cash	292,973	644,994	329,471	2,234,374	4,864,082	6,695,541	8,525,738	10,259,265
Cash - HEAL proceeds restricted for renovatior	-	-	13,881,268	-	-	-	-	-
Accounts Receivable	2,524,537	1,763,577	2,092,176	2,873,047	3,665,111	3,797,803	3,860,020	3,916,192
Due from third party payors	-	-	-	-	-	-	-	-
Prepaid Expenses and other current assets	287,482	203,213	158,000	158,000	158,000	158,000	158,000	158,000
Total Current Assets	3,104,992	2,611,784	16,460,915	5,265,421	8,687,193	10,651,343	12,543,758	14,333,457
Property, Plant & Equipment	13,963,663	14,084,985	14,084,985	28,965,949	50,221,513	50,221,513	50,221,513	50,221,513
Less: Accumulated Depreciation	(12,522,931)	(12,893,005)	(13,263,080)	(13,915,064)	(15,266,154)	(17,034,440)	(18,802,726)	(20,571,012)
Net Property, Plant & Equipment	1,440,732	1,191,980	821,905	15,050,885	34,955,359	33,187,073	31,418,787	29,650,502
Resident Funds held in trust	107,729	106,545	145,130	145,130	145,130	145,130	145,130	145,130
Total Assets	4,653,453	3,910,309	17,427,950	20,461,435	43,787,682	43,983,546	44,107,675	44,129,089
Accounts Payable - Trade	2,935,928	4,115,863	4,480,091	5,657,716	6,335,216	6,493,960	6,633,630	6,773,884
Accrued Expenses	1,199,079	1,039,108	-	-	-	-	-	-
Due to third party payors	282,444	147,371	(66,921)	-	-	-	-	-
Total Current Liabilities	4,417,451	5,302,343	4,413,170	5,657,716	6,335,216	6,493,960	6,633,630	6,773,884
	-							
Cash receipts assessment payable	3,099,730	3,092,567	-	-	-	-	-	-
St. Francis Loan	104,775	104,775	104,775	104,775	104,775	104,775	104,775	104,775
Liability for pension benefits	908,050	1,302,033	1,336,033	1,336,033	1,336,033	1,336,033	1,336,033	1,336,033
Resident Funds Held in Trust	107,729	106,545	145,130	145,130	145,130	145,130	145,130	145,130
Revolver Loan	-	-	-	2,000,000	-	-	-	-
Mortgage	-	-	-	999,696	25,236,832	24,856,981	24,482,848	24,114,346
Total Long Term Liabilities	4,220,283	4,605,919	1,585,938	4,585,634	26,822,770	26,442,919	26,068,786	25,700,284
Total Liabilities	8,637,735	9,908,262	5,999,108	10,243,350	33,157,985	32,936,879	32,702,415	32,474,168
Fund Balance (Prior Period)	(2,894,988)	(3,984,282)	(5,997,954)	11,428,842	10,218,086	10,629,697	11,046,667	11,405,260
Fund Balance (Current Period)	(1,089,294)	(2,013,672)	17,426,796	(1,210,757)	411,611	416,970	358,593	249,661
Unrestricted Net Surplus/(Deficit)	(3,984,282)	(5,997,954)	11,428,842	10,218,086	10,629,697	11,046,667	11,405,260	11,654,921
Total Liabilities and Net Assets	4,653,453	3,910,309	17,427,950	20,461,435	43,787,682	43,983,546	44,107,675	44,129,089

Project #132079
BFA Attachment D

Cayuga County Nursing Home only
Projected Financial Statements for the Years
Ending 2014 (construction year)

Cash Flow Analysis

	MONTH 1	MONTH 2	MONTH 3	MONTH 4	MONTH 5	MONTH 6	MONTH 7	MONTH 8	MONTH 9	MONTH 10	MONTH 11	MONTH 12	TOTAL
CASH - BEG OF PERIOD	-	(32,565)	(65,129)	(97,694)	(130,259)	(162,823)	(195,388)	(227,953)	(260,517)	(293,082)	(325,647)	(358,211)	(390,776)
CASH RECEIPTS													
COLLECTION OF A/R:													
Patient Revenue	522,891	522,891	522,891	522,891	522,891	522,891	522,891	522,891	522,891	522,891	522,891	522,891	6,274,691
Adult Day Care	-	-	-	-	-	-	-	-	-	-	-	-	-
Transportation	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	14,115	14,115	14,115	14,115	14,115	14,115	14,115	14,115	14,115	14,115	14,115	14,115	169,375
TOTAL CASH RECEIPTS	537,006	537,006	537,006	537,006	537,006	537,006	537,006	537,006	537,006	537,006	537,006	537,006	6,444,066
CASH DISBURSEMENTS													
Direct Expenses	369,201	369,201	369,201	369,201	369,201	369,201	369,201	369,201	369,201	369,201	369,201	369,201	4,430,414
Indirect Expenses	184,145	184,145	184,145	184,145	184,145	184,145	184,145	184,145	184,145	184,145	184,145	184,145	2,209,735
Non-Comparables:													
Utilities	10,514	10,514	10,514	10,514	10,514	10,514	10,514	10,514	10,514	10,514	10,514	10,514	126,172
Medical Staff Services	-	-	-	-	-	-	-	-	-	-	-	-	-
Dental	103	103	103	103	103	103	103	103	103	103	103	103	1,231
Other	938	938	938	938	938	938	938	938	938	938	938	938	11,260
Total Non-Comparables:	11,555	11,555	11,555	11,555	11,555	11,555	11,555	11,555	11,555	11,555	11,555	11,555	138,664
Property:													
Rentals	2,169	2,169	2,169	2,169	2,169	2,169	2,169	2,169	2,169	2,169	2,169	2,169	26,030
Interest	-	-	-	-	-	-	-	-	-	-	-	-	-
Principal on Debt	-	-	-	-	-	-	-	-	-	-	-	-	-
Property Insurance	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Total Property	4,669	4,669	4,669	4,669	4,669	4,669	4,669	4,669	4,669	4,669	4,669	4,669	56,030
Adult Day Care	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL CASH DISB.	569,570	569,570	569,570	569,570	569,570	569,570	569,570	569,570	569,570	569,570	569,570	569,570	6,834,842
CASH - INC (DEC)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(32,565)	(390,776)
CASH - END OF PERIOD	(32,565)	(65,129)	(97,694)	(130,259)	(162,823)	(195,388)	(227,953)	(260,517)	(293,082)	(325,647)	(358,211)	(390,776)	

Balance Sheet

December 31, 2012

Assets

Current assets:		
Cash	$	15,333,714
Assets limited as to use - current portion		1,026,577
Patient accounts receivable, less allowance for doubtful accounts of approximately $_____ and $_____ in 2012 and 2011, respectively		12,832,341
Due from affiliates, net		2,418
Due from third party, net		308,043
Other receivables		1,790,828
Inventories		362,227
Capital lease receivable, current		-
Current portion of net investment in direct financing lease		459,292
Prepaid expenses, grant receivable and other assets		1,362,542
Total current assets		33,477,982
Investment in affiliate		1,863,922
Capital lease receivable, long-term		-
Net investment in direct financing lease,net of current portion		-
Assets limited as to use		12,008,536
Tenant security deposits and assets held for residents		1,088,477
Cash and cash equivalents-restricted and board designated		252,278
Other receivables, long-term		1,119,048
Other assets		695,219
Property and equipment, net		70,738,913
Deferred financing charges, net of accumulated amortization of $_____ and $_____ in 2012 and 2011		1,969,030
Grant receivable		6,391,401
Due from affiliates, net of current portion		-
Total assets	$	129,604,806

Liabilities and Net Assets

Current liabilities:		
Current portion of long-term debt		4,463,414

Current portion of capital lease payable	-
Accounts payable and accrued expenses	8,994,278
Accrued payroll, vacation and payroll taxes	5,869,670
New York State gross receipts assessment	243,911
Estimated third party payor settlements, net	1,126,766
Accrued interest	523,661
Refundable deposits	32,700
Current portion of asset retirement obligation	448,584
Advance payments from tenants	505,931
Deferred revenue	11,464
Other liabilites	563,301
Due to affiliates	25,577
Total current liabilities	22,809,257
Long-term liabilities:	
Estimated third party payor settlements, net	7,028,841
Long-term debt, less current portion	64,065,210
Capital lease obligations, net of current portion	-
Assets held for residents	1,088,477
Asset retirement obligations, less current portion	200,889
Accrued interest	504,347
Due to affiliate, long term	-
Other long-term liabilities	6,507,936
Total liabilities	102,204,957
Net Assets:	
Unrestricted	13,799,000
Temporarily restricted	13,483,754
Permanently restricted	117,095
Total Net Assets	27,399,849
Total liabilities and net assets	$ 129,604,806

Statements of Operations and Changes in Net Assets

Year Ended December 31, 2012

	2012
Revenue, gains and other support:	
Net patient service revenues	$ 108,100,039
Food and food service, catering, and diretary consulting revenue	12,269,934
Rental and program income	17,723,741
Interest income on capital lease	188,270
Net assets released from restrictions for operations	130,989
Other operating revenue	868,676
Management Assessment	18,000
Managing Agent fees	138,636
Contributions/Contributions from Affiliate	(57,750)
Grant revenue	245,776
Total revenue, gains and other support	139,626,311
Expenses:	
Salaries and wages	52,891,336
Employee benefits	19,838,752
Supplies and other expenses	33,784,333
Professional fees and other purchased services	10,402,457
New York State gross receipts assessment	3,102,466
Interest expense	5,409,405
Provision for bad debts	1,586,145
Depreciation and amortization	6,659,411
Total expenses	133,674,305
Income (loss) from operations	5,952,006
Nonoperating gains (losses):	
Investment income	26,456
Other revenue	2,673,584
Total nonoperating gains (losses), net	2,700,040
Excess (deficiency) of revenues over expenses	8,652,046
Change in net unrealized gains and losses on investments on other than trading securities	17,963

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Auburn Senior Services, Inc. as the new operator of Cayuga County Nursing Home (companion to 132093) and establish Loretto Management Corporation Inc. as the active parent/co-operator of Auburn Senior Services, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132079 E	Auburn Senior Services, Inc.

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to 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]
7. Submission of an executed lease agreement acceptable to the Department. [BFA]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within 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. Upon completion of construction associated with project 132093, the 80 RHCF beds currently certified for Cayuga County Nursing Home located at 7451 County House Road, Auburn, NY are to be transferred to the expanded RHCF at 3 St. Anthony Street, Auburn, NY, decertifying RHCF services at 7451 County House Road. [PMU]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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.

The projected sensitized budget deficit of $2,070,890 during the transition period, will be financed through available cash and Loretto Management Corporation, Inc. (active parent) financial assistance.

Budget:
Post-Construction

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]
4. Upon completion of construction associated with project 132093, the 80 RHCF beds currently certified for Cayuga County Nursing Home located at 7451 County House Road, Auburn, NY are to be transferred to the expanded RHCF at 3 St. Anthony Street, Auburn, NY, decertifying RHCF services at 7451 County House Road. [PMU]

Council Action Date
October 3, 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 <u>Directors</u> Michael H. Chapman, Sr. Raymond R. D'Agostino Msgr. Charles Fahey Ms. Joann Lloyd Sr. Kathleen Osbelt <u>Sole Corporate Member</u> Loretto Management Corporation <u>Board of Trustees</u> 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
<u>Facilities Reviewed</u>

<u>Nursing Homes</u>

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

<u>Adult Care Facilities</u>

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

<u>Diagnostic and Treatment Centers</u>

Loretto Geriatric Center DTC	08/2003 to present

<u>Licensed Home Care Services Agencies</u>

Loretto Geriatric Center LHCSA	08/2003 to present
Franciscan Collaborative-Home Health Care	01/1011 to present

<u>Hospitals</u>

St. Joseph's Hospital - Syracuse	08/2003 to 01/2006

<u>Individual Background Review</u>

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 #132038). 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.

The applicant presents a transition year budget for 2014. Auburn Senior Services, Inc. will operate the Cayuga County Nursing Home for about 15 months, during the construction and renovation of the Mercy Health Nursing Home. When completed, the former Mercy Health Nursing Home will be a 300-bed nursing home operated by Auburn. The projected year one losses for the former county facility (CON # 132079-E) are $411,516 for 2014. The projected loses during Auburn's operations of the renovated Mercy Health Nursing home (during renovations in 2014) are $818,981. Therefore, the total loses for the two facilities in 2014 are $1,230,497, of which approximately $578,512 is a cash loss. The 2014 budget projections assume Medicaid rate increase based on a combined 300 bed nursing home. If the rate increase is not forthcoming until the full implementation of the single 300 bed facility, then losses for 2014 will increase by approximately $230,230 for the former county facility. Therefore, the applicant would show additional net losses of approximately $1,251,909 in 2014 for the reconstructed former Mercy Health Nursing Home. The total Medicaid sensitized revenue loss for the two facilities would, therefore, be an additional $1,482,139. The sensitized transition period (2014) budget deficit for both this project and CON# 132079-E, is $2,712,636. The sensitized 2014 transition budget appears reasonable.

Auburn's 2014 through 2018 pro-forma balance statement (Attachment H) shows that the applicant will have in excess of $2.2m cash, with net assets of $10.2m on day one 2014. Additionally, if needed the applicant indicates the active parent has the ability to defer its monthly administrative serve payment (approximately $60,000 per month) as well as its dietary service fees provided by an entity controlled by its active parent. (Approximately $160,000 per month)

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 #132038 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
BFA Attachment H	Auburn Senior Services, Inc. ProFoma Statement (2014-2018)

BFA Attachment A
CON#132093

Mercy Health and Rehabilitation

	2012	2011	2010
CURRENT ASSETS	$3,230,614	$3,104,995	$3,419,068
FIXED ASSETS	1,327,725	1,548,461	1,927,155
CURRENT LIABILITIES	9,043,073	7,517,184	4,156,841
LONG TERM LIABILITIES	1,513,353	1,120,554	4,210,437
NET ASSETS	($5,998,087)	($3,984,282)	($3,021,055)
REVENUES	$14,943,557	$15,785,254	$16,353,540
EXPENSES	16,803,053	16,653,789	17,047,994
NET INCOME	($1,859,496)	($868,535)	($694,454)
OCCUPANCY	86.00%	86.54%	85.82%
UTILIZATION:			
MEDICAID	75.00%	74.36%	76.20%
MEDICARE	11.00%	11.28%	12.05%
PRIVATE PAY	14.00%	14.36%	11.75%

CON#132093

Cayuga County Nursing Home BFA Attachment B

	2012	2011	2010
CURRENT ASSETS	$4,867,140	$4,428,526	$3,666,225
FIXED ASSETS	1,000,148	955,759	947,163
CURRENT LIABILITIES	1,097,126	446,770	426,778
LONG TERM LIABILITIES	3,118,929	2,261,668	1,682,610
NET ASSETS	$1,651,233	$2,675,847	$2,504,000
REVENUES	$7,350,272	$7,971,234	$7,074,033
EXPENSES	8,381,506	7,804,648	7,530,935
EXCESS OF REVENUES OVER EXPENSES	($1,031,234)	$166,586	($456,902)
NUMBER OF BEDS	80	80	80
UTILIZATION:			
MEDICAID	75.00%	74.54%	70.68%
MEDICARE	11.22%	10.88%	9.79%
PRIVATE PAY	13.78%	14.58%	19.53%
OCCUPANCY	95.72%	94.67%	95.40%

Balance Sheet

December 31, 2012

Assets

Current assets:		
Cash	$	15,333,714
Assets limited as to use - current portion		1,026,577
Patient accounts receivable, less allowance for doubtful accounts of approximately $_______ and $_______ in 2012 and 2011, respectively		12,832,341
Due from affiliates, net		2,418
Due from third party, net		308,043
Other receivables		1,790,828
Inventories		362,227
Capital lease receivable, current		-
Current portion of net investment in direct financing lease		459,292
Prepaid expenses, grant receivable and other assets		1,362,542
Total current assets		33,477,982
Investment in affiliate		1,863,922
Capital lease receivable, long-term		-
Net investment in direct financing lease,net of current portion		-
Assets limited as to use		12,008,536
Tenant security deposits and assets held for residents		1,088,477
Cash and cash equivalents-restricted and board designated		252,278
Other receivables, long-term		1,119,048
Other assets		695,219
Property and equipment, net		70,738,913
Deferred financing charges, net of accumulated amortization of $______ and $_______ in 2012 and 2011		1,969,030
Grant receivable		6,391,401
Due from affiliates, net of current portion		-
Total assets	$	129,604,806

Liabilities and Net Assets

Current liabilities:		
Current portion of long-term debt		4,463,414

Current portion of capital lease payable	-
Accounts payable and accrued expenses	8,994,278
Accrued payroll, vacation and payroll taxes	5,869,670
New York State gross receipts assessment	243,911
Estimated third party payor settlements, net	1,126,766
Accrued interest	523,661
Refundable deposits	32,700
Current portion of asset retirement obligation	448,584
Advance payments from tenants	505,931
Deferred revenue	11,464
Other liabilites	563,301
Due to affiliates	25,577
Total current liabilities	22,809,257
Long-term liabilities:	
Estimated third party payor settlements, net	7,028,841
Long-term debt, less current portion	64,065,210
Capital lease obligations, net of current portion	-
Assets held for residents	1,088,477
Asset retirement obligations, less current portion	200,889
Accrued interest	504,347
Due to affiliate, long term	-
Other long-term liabilities	6,507,936
Total liabilities	102,204,957
Net Assets:	
Unrestricted	13,799,000
Temporarily restricted	13,483,754
Permanently restricted	117,095
Total Net Assets	27,399,849
Total liabilities and net assets	$ 129,604,806

See accompanying notes to financial statements.

Statements of Operations and Changes in Net Assets

Year Ended December 31, 2012

	2012
Revenue, gains and other support:	
Net patient service revenues	$ 108,100,039
Food and food service, catering, and diretary consulting revenue	12,269,934
Rental and program income	17,723,741
Interest income on capital lease	188,270
Net assets released from restrictions for operations	130,989
Other operating revenue	868,676
Management Assessment	18,000
Managing Agent fees	138,636
Contributions/Contributions from Affiliate	(57,750)
Grant revenue	245,776
Total revenue, gains and other support	139,626,311
Expenses:	
Salaries and wages	52,891,336
Employee benefits	19,838,752
Supplies and other expenses	33,784,333
Professional fees and other purchased services	10,402,457
New York State gross receipts assessment	3,102,466
Interest expense	5,409,405
Provision for bad debts	1,586,145
Depreciation and amortization	6,659,411
Total expenses	133,674,305
Income (loss) from operations	5,952,006
Nonoperating gains (losses):	
Investment income	26,456
Other revenue	2,673,584
Total nonoperating gains (losses), net	2,700,040
Excess (deficiency) of revenues over expenses	8,652,046
Change in net unrealized gains and losses on investments on other than trading securities	17,963

ST. JOSEPH'S HOSPITAL HEALTH CENTER AND SUBSIDIARIES

Consolidated Balance Sheets

December 31, 2012 and 2011

Assets	2012	2011
Current assets:		
Cash and cash equivalents	$ 17,615,649	29,267,260
Investments	79,744,502	52,457,579
Patient accounts receivable, net of allowance for charity care and doubtful accounts of approximately $42,000,000 and $41,000,000 in 2012 and 2011, respectively	100,222,456	82,221,830
Other receivables	9,114,897	13,710,528
Inventories	5,756,325	5,683,431
Prepaid expenses	6,266,850	4,577,412
Assets limited as to use	2,765,000	3,008,404
Estimated third-party payor settlements	456,137	5,693,372
Total current assets	221,941,816	196,619,816
Property and equipment, net	257,746,726	207,626,985
Assets limited as to use	87,790,526	31,141,336
Unamortized debt issuance costs	5,544,870	2,498,719
Other assets	16,999,526	13,451,449
Investment in interest rate cap	390,792	904,327
Equity interest in net assets of St. Joseph's Hospital Health Center Foundation, Inc.	21,687,371	22,171,207
Goodwill	26,571,519	26,571,519
	$ 638,673,146	500,985,358

Liabilities and Net Assets	2012	2011
Current liabilities:		
Short-term borrowings	$ 7,751,113	9,737,576
Current portion of long-term debt	11,267,095	10,253,592
Accounts payable	44,342,728	40,590,774
Accrued expenses and other liabilities	48,040,632	38,692,898
Total current liabilities	111,401,568	99,274,840
Long-term debt, net	238,842,190	122,789,774
Accrued postretirement benefits	20,697,421	21,234,177
Accrued pension benefits	27,850,488	30,358,033
Due to St. Joseph's Health Center Properties, Inc.	128,613	9,209,182
Other liabilities	19,222,942	15,730,741
Total liabilities	418,143,222	298,596,747
Net assets:		
Unrestricted:		
St. Joseph's Hospital Health Center	203,275,031	187,703,965
Noncontrolling interest in SJLS, LLC	1,209,308	1,358,705
Total unrestricted net assets	204,484,339	189,062,670
Temporarily restricted	12,929,525	10,215,367
Permanently restricted	3,116,060	3,110,574
Total net assets	220,529,924	202,388,611
Commitments and contingent liabilities		
	$ 638,673,146	500,985,358

ST. JOSEPH'S HOSPITAL HEALTH CENTER AND SUBSIDIARIES

Consolidated Statements of Operations and Changes in Net Assets

Years ended December 31, 2012 and 2011

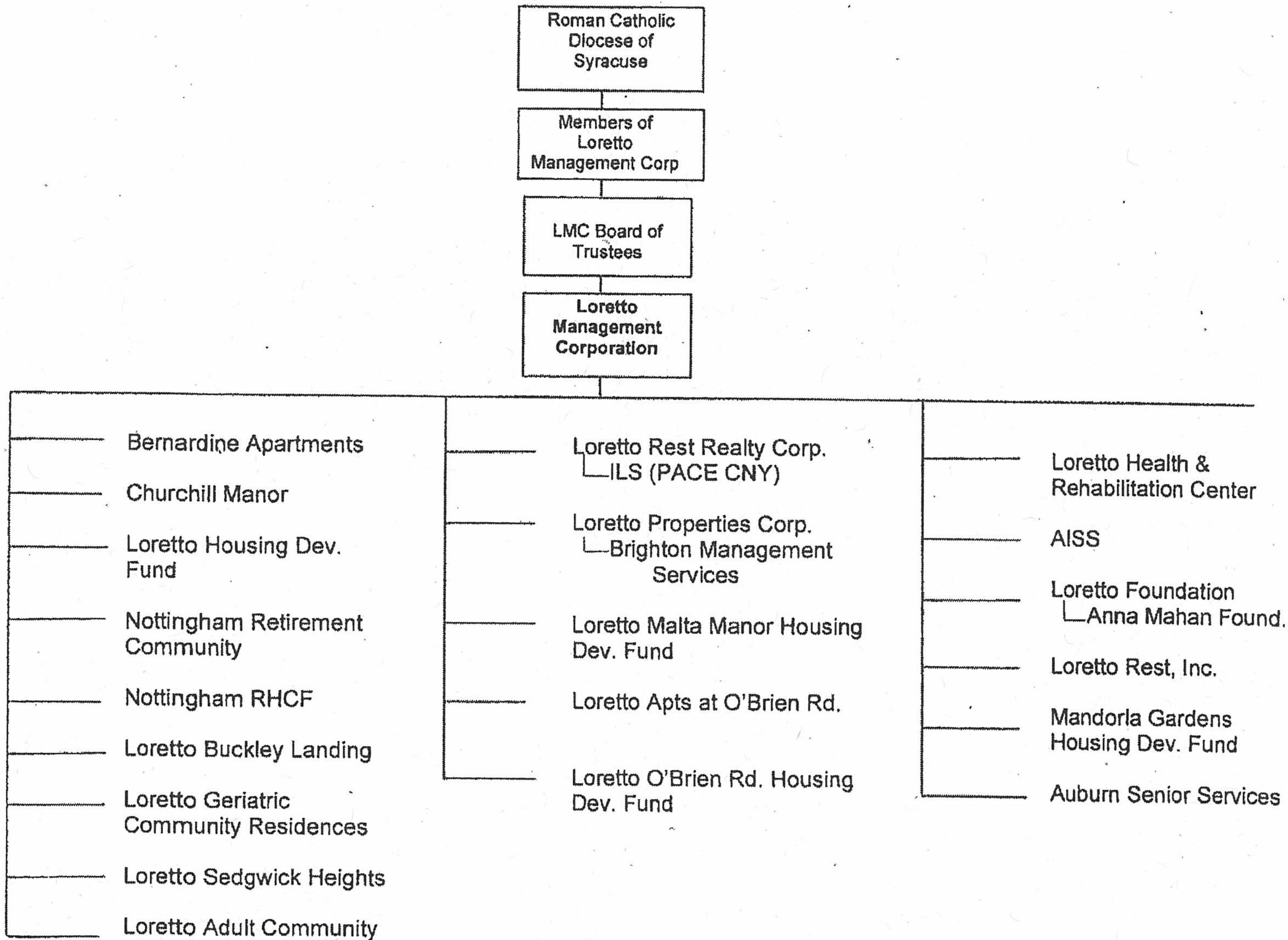
	2012	2011
Unrestricted revenues, gains and other support:		
Net patient service revenue (net of contractual allowances and discounts)	$ 573,845,241	515,700,742
Provision for bad debt	(6,178,042)	(6,975,548)
Net patient service revenue less provision for bad debts	567,667,199	508,725,194
Other revenue	18,354,566	14,748,889
Total revenues, gains and other support	586,021,765	523,474,083
Expenses:		
Salaries and wages	260,846,835	236,831,429
Fringe benefits	61,049,099	57,324,369
Supplies and other expenses	227,433,484	201,931,453
Depreciation and amortization	21,258,049	17,204,911
Interest incurred and expensed	4,721,758	2,654,197
New York State gross receipts tax	1,911,122	1,553,628
Total expenses	577,220,347	517,499,987
Income from operations	8,801,418	5,974,096
Nonoperating revenue:		
Investment income	1,483,778	2,384,727
Change in fair value of interest rate cap	(513,535)	(785,673)
Change in equity of unrestricted net assets of St. Joseph's Hospital Health Center Foundation, Inc.	(1,244,458)	104,714
Equity in earnings of investees	2,548,465	1,899,762
Excess of revenues over expenses	11,075,668	9,577,626
Net income attributable to noncontrolling interest in SJLS, LLC	(1,922,063)	(2,203,983)
Excess of revenues over expenses - St. Joseph's Hospital Health Center and Subsidiaries	$ 9,153,605	7,373,643

CON#132093
BFA Attachment E

Pro Forma Balance Sheet

ASSETS:	
Cash	$4,636,592
Cash- Heal Proceeds	14,927,607
Accounts Receivable	2,092,176
Prepaid Expenses	158,000
Construction	22,361,440
Net Property, Plant and Equipment	821,905
Resident Funds Held in Trust	145,130
TOTAL ASSETS	$45,142,850
LIABILITIES:	
Accounts Payable	$4,413,170
Mortgage Payable	22,361,440
St. Francis Loan	104,775
Liability for Pension Benefits	1,336,033
Resident Funds held in trust	145,130
Working Capital Loan	2,000,000
TOTAL LIABILITIES	$30,360,548
NET ASSETS	$14,782,302

LORETTO ORGANIZATIONAL STRUCTURE



NOTE: Loretto Management Corporation will serve as Active Parent of Auburn Senior Services. Loretto Management Corporation **does not** serve as Active Parent of any of the other entities.

Project #132093
BFA Attachment G

	MONTH 1	MONTH 2	MONTH 3	MONTH 4	MONTH 5	MONTH 6	MONTH 7	MONTH 8	MONTH 9	MONTH 10	MONTH 11	MONTH 12	TOTAL
CASH - BEG OF PERIOD	4,636,592	4,585,163	4,533,734	4,482,305	4,430,876	4,379,446	4,328,017	4,276,588	4,225,159	4,173,730	4,122,301	4,070,872	4,019,443
CASH RECEIPTS													
COLLECTION OF A/R:													
Patient Revenue	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	2,080,403	24,964,838
Adult Day Care	82,310	82,310	82,310	82,310	82,310	82,310	82,310	82,310	82,310	82,310	82,310	82,310	987,714
Transportation	37,464	37,464	37,464	37,464	37,464	37,464	37,464	37,464	37,464	37,464	37,464	37,464	449,572
Other	29,432	29,432	29,432	29,432	29,432	29,432	29,432	29,432	29,432	29,432	29,432	29,432	353,188
TOTAL CASH RECEIPTS	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	2,229,609	26,755,312
CASH DISBURSEMENTS													
Direct Expenses	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	1,091,305	13,095,661
Indirect Expenses	778,173	778,173	778,173	778,173	778,173	778,173	778,173	778,173	778,173	778,173	778,173	778,173	9,338,075
Non-Comparables:													
Utilities	35,181	35,181	35,181	35,181	35,181	35,181	35,181	35,181	35,181	35,181	35,181	35,181	422,174
Medical Staff Services	12,945	12,945	12,945	12,945	12,945	12,945	12,945	12,945	12,945	12,945	12,945	12,945	155,339
Dental	1,607	1,607	1,607	1,607	1,607	1,607	1,607	1,607	1,607	1,607	1,607	1,607	19,284
Other	9,794	9,794	9,794	9,794	9,794	9,794	9,794	9,794	9,794	9,794	9,794	9,794	117,530
Total Non-Comparables:	59,527	59,527	59,527	59,527	59,527	59,527	59,527	59,527	59,527	59,527	59,527	59,527	714,327
Property:													
Rentals	1,852	1,852	1,852	1,852	1,852	1,852	1,852	1,852	1,852	1,852	1,852	1,852	22,219
Revolver Repayment	166,667	166,667	166,667	166,667	166,667	166,667	166,667	166,667	166,667	166,667	166,667	166,667	2,000,000
Interest	105,153	105,153	105,153	105,153	105,153	105,153	105,153	105,153	105,153	105,153	105,153	105,153	1,261,842
Principal on Debt	31,654	31,654	31,654	31,654	31,654	31,654	31,654	31,654	31,654	31,654	31,654	31,654	379,851
Property Insurance	2,653	2,653	2,653	2,653	2,653	2,653	2,653	2,653	2,653	2,653	2,653	2,653	31,836
Total Property	307,979	307,979	307,979	307,979	307,979	307,979	307,979	307,979	307,979	307,979	307,979	307,979	3,695,747
Adult Day Care	44,054	44,054	44,054	44,054	44,054	44,054	44,054	44,054	44,054	44,054	44,054	44,054	528,651
TOTAL CASH DISB.	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	2,281,038	27,372,461
CASH - INC (DEC)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(51,429)	(617,149)
CASH - END OF PERIOD	$4,585,163	$4,533,734	$4,482,305	$4,430,876	$4,379,446	$4,328,017	$4,276,588	$4,225,159	$4,173,730	$4,122,301	$4,070,872	$4,019,443	

Auburn Senior Services, Inc.
Projected Financial Statements for the Years
Ending 2011 thru 2018

Projected Statements of Financial Condition	Mercy only							
	Actual 2011	Actual 2012	Projection 2013	Projection 2014 (YR-1)	Projection 2015 (YR1)	Projection 2016 (YR2)	Projection 2017 (YR3)	Projection 2018 (YR4)
Cash	292,973	644,994	329,471	2,234,374	4,864,082	6,695,541	8,525,738	10,259,265
Cash - HEAL proceeds restricted for renovatior	-	-	13,881,268	-	-	-	-	-
Accounts Receivable	2,524,537	1,763,577	2,092,176	2,873,047	3,665,111	3,797,803	3,860,020	3,916,192
Due from third party payors	-	-	-	-	-	-	-	-
Prepaid Expenses and other current assets	287,482	203,213	158,000	158,000	158,000	158,000	158,000	158,000
Total Current Assets	3,104,992	2,611,784	16,460,915	5,265,421	8,687,193	10,651,343	12,543,758	14,333,457
Property, Plant & Equipment	13,963,663	14,084,985	14,084,985	28,965,949	50,221,513	50,221,513	50,221,513	50,221,513
Less: Accumulated Depreciation	(12,522,931)	(12,893,005)	(13,263,080)	(13,915,064)	(15,266,154)	(17,034,440)	(18,802,726)	(20,571,012)
Net Property, Plant & Equipment	1,440,732	1,191,980	821,905	15,050,885	34,955,359	33,187,073	31,418,787	29,650,502
Resident Funds held in trust	107,729	106,545	145,130	145,130	145,130	145,130	145,130	145,130
Total Assets	4,653,453	3,910,309	17,427,950	20,461,435	43,787,682	43,983,546	44,107,675	44,129,089
Accounts Payable - Trade	2,935,928	4,115,863	4,480,091	5,657,716	6,335,216	6,493,960	6,633,630	6,773,884
Accrued Expenses	1,199,079	1,039,108	-	-	-	-	-	-
Due to third party payors	282,444	147,371	(66,921)	-	-	-	-	-
Total Current Liabilities	4,417,451	5,302,343	4,413,170	5,657,716	6,335,216	6,493,960	6,633,630	6,773,884
Cash receipts assessment payable	3,099,730	3,092,567	-	-	-	-	-	-
St. Francis Loan	104,775	104,775	104,775	104,775	104,775	104,775	104,775	104,775
Liability for pension benefits	908,050	1,302,033	1,336,033	1,336,033	1,336,033	1,336,033	1,336,033	1,336,033
Resident Funds Held in Trust	107,729	106,545	145,130	145,130	145,130	145,130	145,130	145,130
Revolver Loan	-	-	-	2,000,000	-	-	-	-
Mortgage	-	-	-	999,696	25,236,832	24,856,981	24,482,848	24,114,346
Total Long Term Liabilities	4,220,283	4,605,919	1,585,938	4,585,634	26,822,770	26,442,919	26,068,786	25,700,284
Total Liabilities	8,637,735	9,908,262	5,999,108	10,243,350	33,157,985	32,936,879	32,702,415	32,474,168
Fund Balance (Prior Period)	(2,894,988)	(3,984,282)	(5,997,954)	11,428,842	10,218,086	10,629,697	11,046,667	11,405,260
Fund Balance (Current Period)	(1,089,294)	(2,013,672)	17,426,796	(1,210,757)	411,611	416,970	358,593	249,661
Unrestricted Net Surplus/(Deficit)	(3,984,282)	(5,997,954)	11,428,842	10,218,086	10,629,697	11,046,667	11,405,260	11,654,921
Total Liabilities and Net Assets	4,653,453	3,910,309	17,427,950	20,461,435	43,787,682	43,983,546	44,107,675	44,129,089

Project #132093
RFA Attachment H

<u>RESOLUTION</u>

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Auburn Senior Services as operator of Mercy; establish Loretto Management Corporation, Inc. as the active parent/co-operator; renovate/expand Mercy, adding a 60 bed wing for a total of 300 beds to accommodate transfer of beds from Cayuga County Nursing Home (companion to CON 132079), and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

<u>NUMBER</u>:	<u>FACILITY/APPLICANT</u>:
132093 B	Auburn Senior Services, Inc.

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]
4. Upon completion of construction associated with project 132093, the 80 RHCF beds currently certified for Cayuga County Nursing Home located at 7451 County House Road, Auburn, NY are to be transferred to the expanded RHCF at 3 St. Anthony Street, Auburn, NY, decertifying RHCF services at 7451 County House Road. [PMU]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish L. Woerner, Inc. d/b/a HCR as the operator of Washington County Public Health Nursing Services Certified Home Health Agency and Long Term Home Health Care Program, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER	APPLICANT/FACILITY
131281 B	L. Woerner, Inc. d/b/a HCR

APPROVAL CONTINGENT UPON:

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

APPROVAL CONDITIONED 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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

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

<u>RESOLUTION</u>

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

NUMBER:	FACILITY:
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)
2229-L	The Pavilion at Vestal, LLC (Broome County)

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

October 3, 2013

C. <u>APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES</u>

<u>CATEGORY 3</u>: Applications Recommended for Approval with the Following:

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

Ambulatory Surgery Centers – Establish/Construct **Exhibit #21**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	131030 B	Bay Ridge Surgi-Center, LLC (Kings County) One Member Opposed at EPRC	Contingent Approval
2.	131308 B	Great South Bay Endoscopy Center, LLC (Suffolk County) One Member Opposed at EPRC	Contingent Approval

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.

<u>RESOLUTION</u>

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a two-specialty freestanding ambulatory surgery center providing gastroenterology and pain management services, to be located at 370 Bay Ridge Parkway, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

<u>NUMBER</u>:	<u>FACILITY/APPLICANT</u>:
131030 B	Bay Ridge Surgi-Center, LLC

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended, contingent upon:

1. Submission of a 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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

Public Health and Health Planning Council

Project #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

Need Analysis

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty free standing ambulatory surgery center to be located in Suffolk County, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
131308 B	Great South Bay Endoscopy Center, LLC

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five (5) years from the date of its issuance is recommended, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a 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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

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

October 3, 2013

C. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 4: Applications Recommended for Approval with the Following:

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

Acute Care Services – Establish/Construct **Exhibit #22**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	132088 E	St. Lawrence Health System, Inc. (St. Lawrence County) Mr. Booth - Interest One Member Opposed at EPRC One Member Abstained at EPRC	Contingent Approval

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. 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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Gouverneur Hospital as the operator of EJ Noble Hospital of Gouverneur and establish St. Lawrence Health System, Inc., as the active parent of Canton-Potsdam Hospital and Gouverneur Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
132088 E	St. Lawrence Health System, Inc.

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]

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

Barbara DelCogliano
Director
Bureau of Project Management
NYS Department of Health
Empire State Plaza
Corning Tower, Room 1842
Albany, New York 12237

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

October 3, 2013

C. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

Ambulatory Surgery Centers – Establish/Construct **Exhibit #23**

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	121373 B	Lockport Ambulatory Surgery, LLC (Niagara County) Mr. Booth - Interest Two Members Abstained at EPRC	Disapproval

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.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 3rd day of October, 2013, having considered any advice offered by the Regional Health Systems Agency, the Public Health and Health Planning Council, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to disapprove the application referenced below to establish a multi-specialty ambulatory surgery center to be located at 160 East Avenue; and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER	APPLICANT/FACILITY
121373 B	Lockport Ambulatory Surgery, LLC